ernment have undertaken to abolish duties on Kashmir shawls and to refund the customs duties charged on goods imported for Kashmir. Thus all the states have been compelled to abolish transit duties. But the British government by charging for goods made for consumption in the Indian states are virtually levying transit duties.

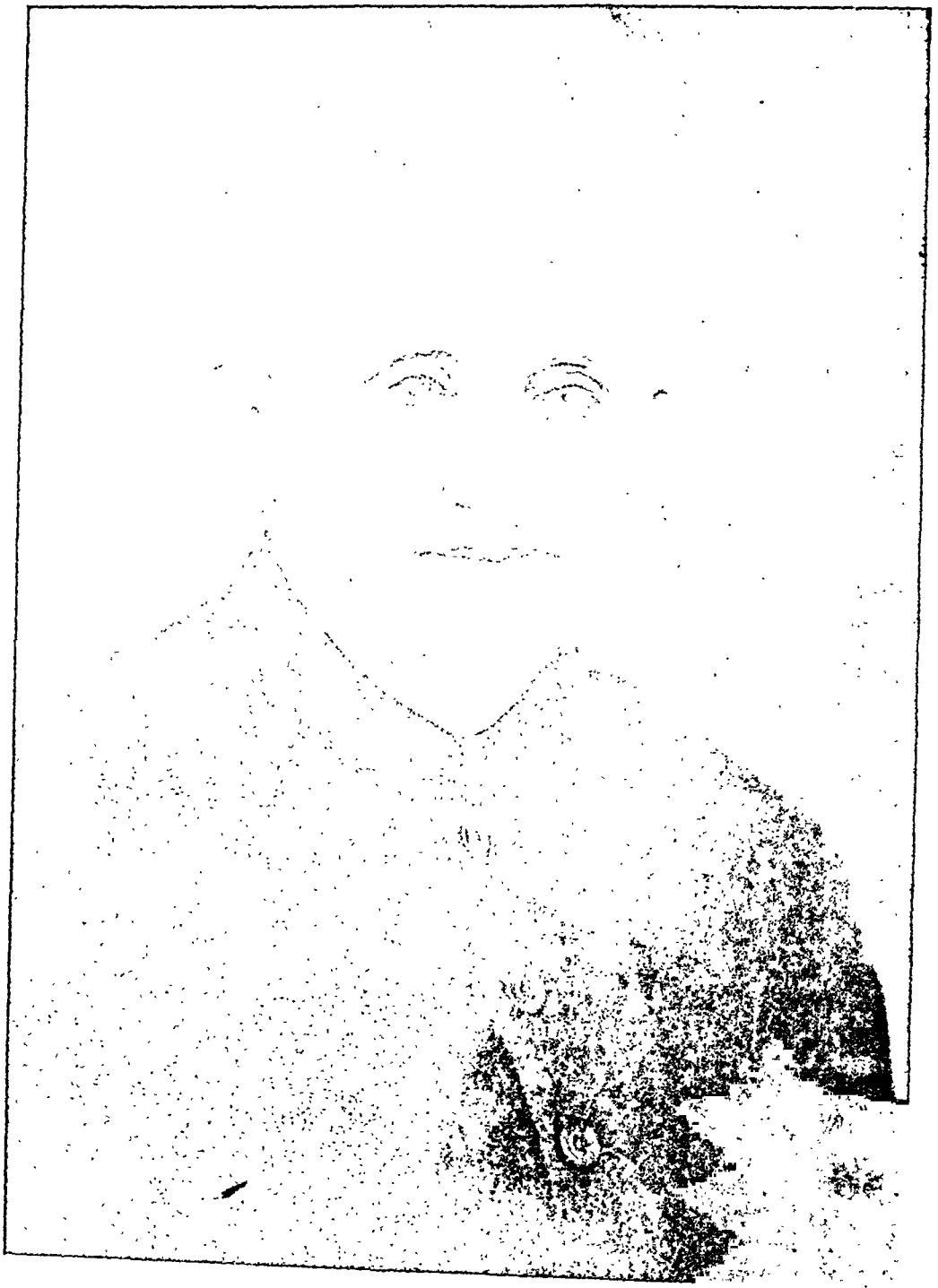
Since some states tax the goods again, there is double taxation bearing heavily upon the states' people. The maritime states are not allowed to develop their natural harbours or discriminate in the rates of customs duties, thus affecting the industrial progress of the state. In almost all the Indian states, the export of grain is completely forbidden, and the customs duties charged on both imports and exports are indiscriminate. The states cannot retaliate by forming their own customs-unions, because they are not allowed to enter into any relation with one another, except with the British government.

The policy of the British government to develop only two or three important ports, regardless of cost or natural facilities, has killed the efforts of the states to develop their own local ports.

The states have demanded that they should be given a fair share of the financial and economic benefits. They have demanded a voice in determining the industrial policy of the nation and regulating the details of the collective customs revenue. About ten crores of rupees in the total forty-five crores of aggregate import duties, seem to be a fair share of the states and unless the states are thus compensated there can be no equal and just federation.

INDIAN STATES AND THE FEDERAL PLAN

Made and Printed in India by D. K. Parker
at the New Jack Printing Works,
75, Apollo Street, Fort, Bombay



Bhulabhai J. Desai

LEADER OF THE OPPOSITION, INDIAN LEGISLATIVE ASSEMBLY

INDIAN STATES AND THE FEDERAL PLAN

By
Y. G. KRISHNAMURTI M.A.

WITH A FOREWORD BY
BHULABHAI J. DESAI

Publishers
RATANSEY PARKER & CO.,
BOMBAY

Dedicated To

PROF. S. SRIKANTASASTRI

In Affection and Esteem

FOREWORD

IN this small volume Mr. Y. G. Krishnamurti has attempted to give a lucid presentation of the much discussed subject "Indian States and The Federal Plan".

In dealing with the doctrine of federalism the author describes the views of several thinkers on the subject and contends that any federal constitution must be based on pragmatic utilitarianism and pluralism. He envisages the ideal as a parliamentary state, federal in its fundamental character and distributive in technique, harmonising the extremes of plurality and unity. Naturally he has to stress the obvious result that the Indian States will have to renounce the notion of absolute legal sovereignty. It all depends on how this theory will in practice work towards bringing together the hitherto self-governing units of Indian provinces and the Indian States.

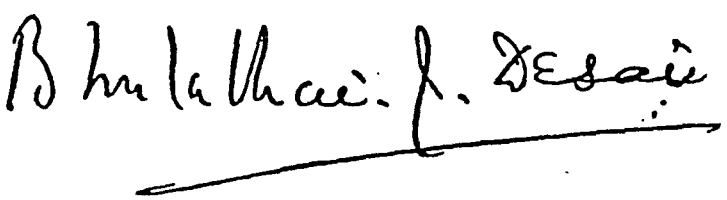
According to the writer, whether federalism is but a half-way-house to a decentralised unitary state or a rigid federation, in the present condition in India this form of Government provides the best method to prevent the rise of despotic government. He rightly points out that the concept of sovereignty when applied to Indian States is devoid of all political significance, and that it is time that the princes realised that they possess a small degree of sovereignty dependent only on the good-will of what is described as the Paramount Power, namely, the outside British intervention.

Unlike American States the Indian States can be coerced and the Paramount Power can interfere either with individual citizen or individual State.

He has dealt with the economic consequences to the Indian States by joining the Federal Structure and contends that the clauses relating to the financial obligations of the federating States are inadequate.

He has analysed the clauses of the Government of India Act 1935 bearing on Indian States and has dealt with problems like the administration of federal laws in the States, the position of a financially bankrupt State in the Federation, the right to encroach upon the sovereignty of the State if the Governor-General takes refuge in the extra-ordinary powers and lastly how princes would be free to leave the Federation in the event of a break-down. It appears to me that once the Indian States join a federation their authority would be shaken and the nature of the sovereignty so greatly exposed that it would be impossible for them to re-build the threadbare appearance of authority which they possess today.

He stresses the fact that the people of the States have recently given clear evidence of their passion for unity and solidarity with the rest of the people in India. I can hardly agree with the fear expressed by the author in the following observation:—"Unless radical changes are introduced immediately, constructive statesmanship will become an impossibility and the forces of revolution to break and not make the States will be let loose. Ordered and disciplined progress will become impossible". I hope that it will be borne in mind by those who are preventing the growth of national self-government in this country.



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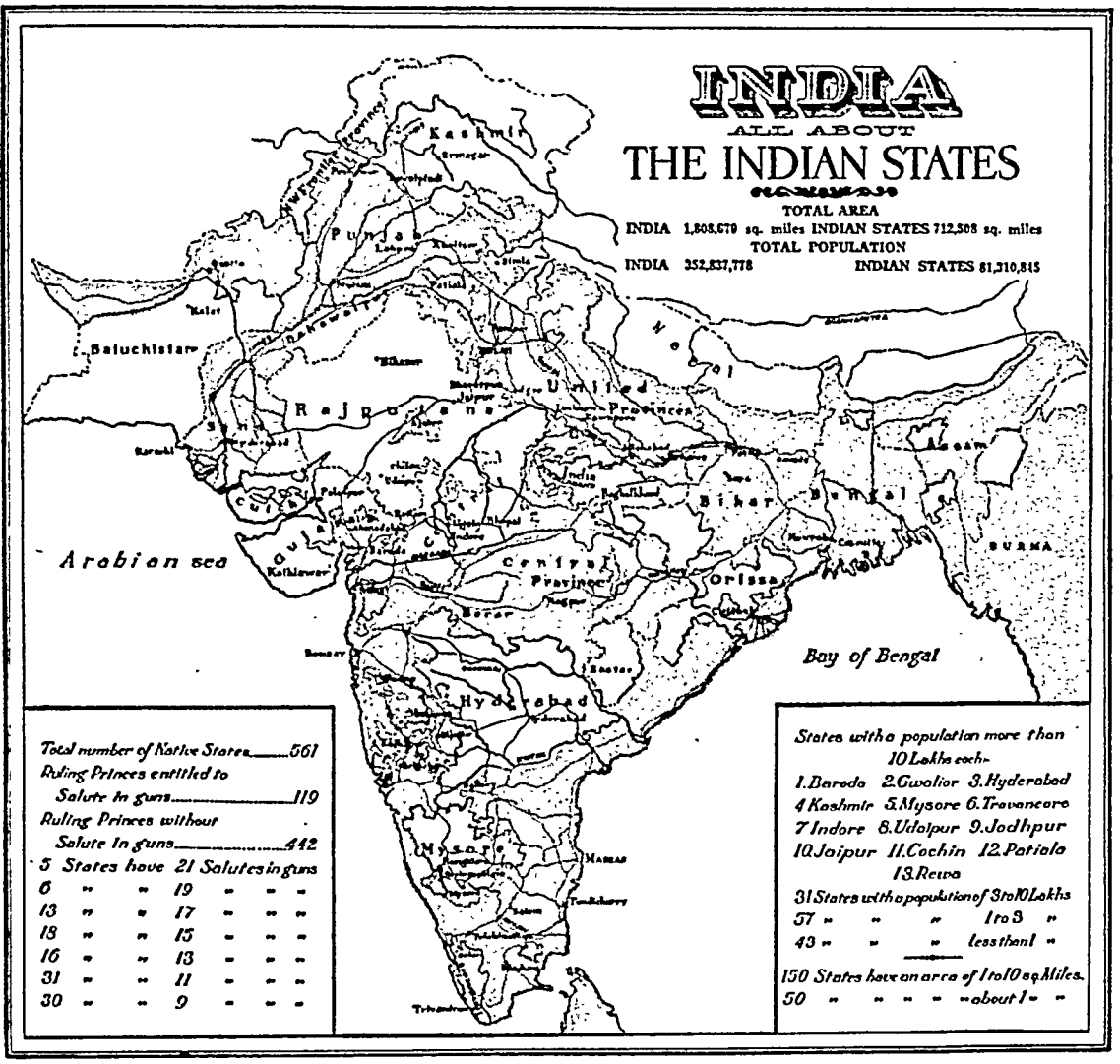

By Courtesy Prof. V. RAGHAVENDRA RAO

INDIAN STATES & FEDERAL PLAN

"Sir Orpheus Midlander; We have found that we can get on without thinking. You see, thinking is very little use unless you know the facts. And we never do know the political facts until twenty years after. Sometimes a hundred and fifty."

Bernard Shaw; Geneva.

PREFACE

THE ordeal of fire and sword through which the world is passing now is the crucial test of sincerity of purpose, a test of the oft-repeated assurance that national and international disputes should be settled by peaceful discussion rather than by a resort to war. Ostensibly in a fight for democracy and self-determination, Britain is forced to set right its own home affairs in consistence with this accepted principle before it can enlist the sympathy of the world. In response to the demand of India the Viceroy reiterated the Prime Minister's statement that the general aim of the war was "laying the foundation of a better international system, which will mean that war is not to be the inevitable lot of each generation."

As regards India the lapse of two decades since the Government of India Act of 1919, interpreted by Lord Irwin in 1929 and endorsed by Sir Samuel Hoare in 1935 as "the natural issue of India's progress as contemplated in the Act (of 1935) was the attainment of Dominion Status", has merely been re-asserted as a sufficient reply to the criticism that the Act of 1935 nowhere mentions Dominion status. According to this policy of gradualism, the British government profess their willingness "to enter into consultation with the representatives of the several communities, parties and interests in India and with the

Indian Princes, with a view to securing their aid and cooperation in the framing of such constitutional modifications as might be deemed desirable."

The disillusioning statement is noteworthy for the insistence on the soundness of the general federal plan according to the Act of 1935 and where exceptions and modifications are made, they will be in the interests of the minorities and the reactionary elements in the country. The people of the states are deliberately ignored in the consultations with the leaders of opinion by the Viceroy and no doubt this will serve as a precedent for consultations after the war. The tedious, futile and puerile story of Commissions, Conferences and Committees will be repeated and if Dominion status emerges out of these discussions, it will be remote, unfriendly, melancholy and slow.

Mahatma Gandhi has made it clear that full Dominion status at no distant date, is in his views the same as independence, which is the declared goal of the Congress. Gandhiji's realism and moderation can be abundantly justified in the light of recent developments in Eire and South Africa. Eire has declared its neutrality and South Africa only by a narrow majority threw its weight on the side of Britain. Canada, New Zealand and Australia reserve the right to send expeditionary forces and are manufacturing their own armaments. But as regards India alone, Britain is complacent and is tolerating the autocratic rule of 561 princes, who have abandoned the method of reason and peaceful consultation in dealing with their subjects. The British government has practically endorsed with reference to India, the view of the rulers that since the enemy is at the gates, constitutional reforms are out of question for several decades to come.

The facile optimism that the end of the present war will inaugurate a millenium is not shared by thinkers interested in the fate of **Homo Sapiens.** H. G. Wells categorically asserts "To call the threatened world convulsion a war between 'allied democracies'

of the world and the 'totalitarian states' will be putting all too fine a name upon it. The reality will be a war of established governments and governing systems claiming to represent 'democracy' but unwilling and unprepared to set themselves to realise the modern democratic idea against expansive desperado governments that have shown themselves contemptuous of democratic pretensions and dangers to the general peace. It will be another war for the alteration or preservation of frontiers". And, we might add, for the preservation of the **status quo** in the Empire.

The end of this war will see the exhaustion on an unprecedented scale of all the material and moral resources of the belligerents, for it has become an obvious fact that no country can really win a modern war. Economic recovery will demand that British interests in India should not be surrendered, in view of the increasing reluctance of the Dominions to toe the line of the economic policy of Great Britain. Naturally such a realistic outlook is responsible for the shyness of the British government to commit itself beforehand in India. But facts are stubborn things and India has demanded that a constituent assembly should be formed upon the principles of universal suffrage and then only a satisfactory system of government can be evolved.

Illiteracy, economic backwardness, minority rights and similar so-called obstacles have not prevented Canada or Russia for becoming the leading states of the world. Therefore the ideal of a parliamentary state, federal in character and distributive in technique guaranteeing the fundamental rights of citizenship as envisaged in the present thesis can become a reality if the constituent units renounce the notion of absolute legal sovereignty.

Communism is not suited to the genius of India but the constitutional experiments of the United States of Soviet Russia will be of great use to this country. Indian democracy will evolve on lines entirely different from that of England or Russia.

Representative institutions—rural and urban, will be affiliated to the district and provincial, the provinces being demarcated according to linguistic areas. The provincial assemblies can elect an executive which along with council of nationalities (representative of the various states and other autonomous units) choose a presedium. The civil service will not be a spoils system but one governed by a council of the trades of the several departments. This council associated with the presidium will be the government of the country.

Thus alone can there be the primacy of facts over mere theory and effective economic planning will become an immediate reality. But before the realisation of such an ideal, unless wiser counsels prevail, the people of India, must pass through a period of unprecedented travail and suffering, but true to the principles of justice and non-violence.

I am sincerely grateful for the foreword to Mr. Bhulabhai J. Desai, one of the most versatile and disinterested patriots of our time, who are as few as welcome. This volume is dedicated to Prof. S. Srikantasastri, of the Mysore University, who has carved a niche for himself in Indian scholarship. My thanks are due to Mr. N. G. Jog M.A., LL,B,, of the Bombay Chronicle, for the particular help in editing the manuscript and reading the proofs. I am extremely obliged to the Publishers, Seth Ratansey Jetha and Mr. D. K. Parker for having so attractively brought out the book in spite of the abnormal conditions brought on by the war. To the former especially I owe a deep debt of gratitude, which is more personal than professional and which no formal words can requite.

Y. G. KRISHNAMURTI.

Bombay,
November, 1939

CONTENTS

Appendices

CHAPTER I

THE PROBLEM STATED

FOR more than a decade the problem of the Indian states has loomed large in the political life of the country, in view of the approaching federation. But it is safe to say that a scientific and dispassionate study of the problem on its merits, with full historical perspective, has not received its meed of attention.

A critical approach to the problem has become a desideratum in view of the fact that the subject offers a fertile field for purposes of propaganda and for the protection of vested interests.

The historical evolution of the various institutions in the country must be clearly traced out from the juristic, administrative, political, economic and social points of view in order to arrive at a correct estimate of the centripetal and centrifugal tendencies, so that the future development of polity may be clearly mapped out.

It is particularly true of this problem that 'suppressio veri' and 'suggestio falsi' have become rampant. The first-hand sources have either not been utilised at all or have been taken out of their context for the purpose of special pleading. It is also unfortunately true that the original documents themselves are highly equivocal on certain crucial points like sovereignty, economic relations and Dominion status.

Among the writers on this subject belonging to what may be called the conservative school,

there are those who see salvation of India only in a unitary form of government. Others again, visualise Dominion status as a distant goal and in order to stem the tide of socialism, entrench themselves behind the principles, privileges and practices of the British government.

A class of writers is in despair of effecting a compromise and thus asserts that Dominion status even as a distant goal is out of the scheme of practical politics.

The Moderate elements in British India see possibility of compromise, without necessarily abolishing the Indian states, and desire to bring into practice a new political usage which will have the force of convention and thus make federation their immediate goal. But, it is, in fact, the advocates of this view that have little political influence in the country and they are themselves partly responsible for not giving a constructive and united scheme.

The emergence of the Congress as the biggest party in the country with a substantial backing of the people of both British India and Indian states, is a great factor but the scheme prepared by the Nehru Committee estranged the minorities, the princes and also other parties opposed to the Congress, and therefore was almost still-born.

The Indian States' People's Conference though it has been in existence for more than two decades, can hardly be said even now to be fully articulate, and its resolutions have been consistently opposed by some of the Indian princes. No pains have been spared by the princely order to suppress the opinions of the states' people.

This fact, unfortunately has lent an aggressive colour to some of the resolutions of the Conference. Thus the estrangement of the states' people and the princes has proceeded further.

The recent events in Mysore, Travancore, Hyderabad, Rajkot, and Kashmir have shown clearly, that popular opinion in the states has now become highly articulate. Fools learn from their own experience and wise men learn from others' experience. And it is to be hoped that the princely order would realise that the full redress of grievances is the only way to break the vicious circle of agitation, repression and reform.

Similarly, the spokesmen of the princes engaged to plead specially on behalf of the sovereignty of the states, have inextricably committed themselves to some statements which cannot stand a moment's scrutiny, either from the point of view of international law, political theory, or administrative usage.

Even among these, differences of opinion are clearly visible and an attempt has been made by some of the princes not to present a united front but to invoke various distinctions like original states and created states, major states and mediatised chiefs, sovereign and non-sovereign states etc.

There is an undeniably increasing communistic view which stands for the total abolition generally of the present social order and more particularly "medieval anachronisms".

From the British Indian point of view, there has been expressed the opinion that to hitch the

state-waggon to the star of British India would retard the progress of the major part of the country. From the British government point of view, the Butler Committee Report has clearly enunciated the goal of federation and made the position of the British government definite as regards paramountcy. Since it is impossible to get rid of the impression that the British government, without clearly indicating Dominion status as the immediate goal, are imposing federation mainly for the purpose of consolidating the conservative interests in the country, for the protection of British Empire and also for fighting extremist views, the recommendations of the Butler Committee have been attacked from all quarters.

It is also a regrettable fact that political expressions and terminologies have not been clearly understood by various writers. Moreover, many misleading ideas like the supposed attachment of the Indian people to monarchy, exaggerated views of communalism etc., have been taken for granted, though the history of Indian culture gives the lie direct to such assertions.

Though the present writer does not claim to have said the final word upon controversial topics, an attempt has been made to give, in a proper historical perspective, a correct picture of the present position of the Indian states and their relation to British India and the proposed federation.

To eschew the extremes of prejudice and patriotism and present an unbiased, scientific view of the subject has been my main purpose.

CHAPTER II

DOCTRINE OF FEDERALISM

THE doctrine of federation has been expounded from various laws, derived on the analogy of the physical sciences on the one hand and metaphysical considerations on the other.

The supremacy of the sovereign power, created by a social contract and inferred as the law of nature by Hobbs, with its necessary corollary of the divine right theory, was opposed by the principle of consent, advocated by Locke. The pragmatic utilitarian views of Hume, William James and Laski influenced greatly the ideology which gave shape to the theory of federalism. Relativity and expediency came to be emphasised more and more and resulted in the theory of separation of powers and harmonious autonomy of the constituent units.[1]

In the American constitution, the federal state first assumed a definite political status. Bryce enunciated the difference between the federal state and the confederation as depending upon the extent of the federal government controlling every citizen of the constituent state directly or through a governmental organ which could restrain the component units within their allotted sphere.

The indestructibility of the union created by a rigid constitution and self-governing local government with power of initiative were the live

1. de Montesquieu, *De L' Esprit des Loix,* 1748, Book IX, Chapter 1.

characteristics of the federation, the distribution of powers being effected positively by conferring certain powers on the national government and negatively by imposing certain restrictions on the states.[1]

Willoughby assumes that to the federal state national sovereignty should be conceded. The federal units must each be sovereign and have the right of nullification, which is the true test in the distinction beween confederation and federation.[2]

But the tests of federalism according to Dicey, are the supremacy of the constitution, the distribution of powers among the states in the limited and co-ordinate authority and the power of the court to act as the interpreter of the constitution. A union, rather than a unity, was the essential characteristic and this must be based on a complicated contract, which must be necessarily rigid.[3]

From the juristic point of view, Kelsen has drawn the conclusion that the sovereignty of the state must necessarily be renounced and the basic norm of the collective system of law should be achieved by gradual stages of decentralization.[4]

The possible reconciliation of unitary rights and plurality rights was enunciated by Gierke, who gave an ethical and subjective bias, by postulating the conceptions of the corporation as a

1. Bryce, *The American Commonwealth*, Vol. I, p. 417.
2. W. W. Willoughby, *The Nature of the State.*
3. A. V. Dicey, *The Law of the Constitution*, 1924 p. 150-153.
4. Hans Kelsen, *Das problem der Souveraintat und die Theorie des Volkerrechts.*

real collective person.[1] From this doctrine the modern pluralistic theories have been derived.

In the federal state there is the manifestation of the complete state, when there is division, not of ownership, but of the exercise of state authority. The rapid advance in the social and economic conditions brought forward the pragmatic theory in a new form. A pluralistic state, on the analogy of a pluralistic world, was advanced by Beard, William James and Laski and the emphasis is shifted from the federal mechanism to the federal function in the state.[2]

Thus the ideal state is considered to be administratively decentralised, legislatively centralised, and judicially predominant.

Territorial unity should not destroy functional independence and individual freedom. A parliamentary state with a federal character is the best. Therefore the states should be voluntary territorial communities, federal in character and distributive in technique.

Opposed to this view and based on the gospel of corporate production, federalism has been criticised as but the fig leaf of absolutism.[3]

The decentralisation of the unitary state and the progress from unity to plurality is based

1. Gierke, *Die Genossenschaftstheorie*, P. 8.
2. Charles Beard, *American Government and Politics*, P. 450.
   William James, *Pragmatism* pp. 56-57. "The theory of federalism should be by its very nature based on empericism."
   William James, *Pluralistic Universe*, p. 322. "The pluralistic Universe is thus more like a federal republic than like an Empire or kingdom."
3. Karl Marx. *The Civil War in France* pp. 33, 34.

upon materialistic dialectic and is opposed to 'Genossenschaftstheorie', which advocates progress from plurality to unity. Hence the democratic centralism of Marx is in opposition to the capitalist, military and official centralism by the conscious proletariat.

The sovereignty of a state, according to international law implies an essential system of norms and any expansion of that sovereignty can only be a system of law as the expression of unity and thus state sovereignty and law must be equated in any legal federalism. But the juristic consequences that follow if the states retain their sovereignty would mean that though the whole constitution was federal, it is not necessarily national.

Jellinek asserts that neither an individual nor a state can by a treaty with others, create a nationality hitherto non-existent.[1]

A federal state is defined as a state in which the sovereign power has by constitution divided the totality of the functions to be exercised by itself and leaves the rest, so long as the constitutional limitations are observed, to the non-sovereign member states which have been created by the grant of state authority.[2] Therefore allegiance to the federal state is primary and to the member state is only secondary. The legal deduction is that all the members are subordinate to the federal state and have no right of secession. Jellinek takes both the juristic and empirical views.

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1. Jellinek, *Die Lehre Von den Staatenvertindungen.*
2. *Ibid,* p. 278.

Therefore any federal constitution must be based upon pragmatic utilitarianism and pluralism. A pluralistic state recognises dual state authority, with decentralisation of functions.[1]

The federal state is a transitory form from confederation to a decentralised unitary state and this can be achieved by making and administering the law, under the general guidance of the national legislature and the pluralists urge that the absolute notion of legal sovereignty should first be renounced and then federation would be deprived of much of its bad odour and would emerge as an associative authority. It will be a collective personality based on territory and bound by law harmonising according to utilitarianism the extremes of plurality and unity.

The defects of federalism such as the danger of rebellion or secession, the formation of separate combinations of the component states, want of uniformity in legislation, and the possibility of local controversies assuming dangerous forms, can be removed, as pointed out by Bryce, by devising a constitution giving scope for diversity of legislation, by adhering to the doctrine of the legal indestructibility of the union and above all by fostering the feeling of a common patriotism.

This is specially true of a country where the need for uniting discreet parts of a nation into one national government, without extinguishing the separate administrations and local patriotism is urgent, as in India.

1. Jellinek, *Die Lehre Von den Staatenvertindungen*, p.279.

Whether federalism is but a half-way-house to a decentralised unitary state or a rigid federation, during the period of transition, it provides the best method to prevent the rise of despotic government and diminishes the risk to which its size and the diversities of its parts expose the nation.

As a great educative factor, it stimulates local legislatures to discharge the affairs of the neighbourhood to the satisfaction of the citizens and by devolving clearly defined powers, the love of local independence is counter-balanced by the sense of unity of race, language, culture, and a common pride in the national history.[1]

1. Bryce, *The American Commonwealth*, Vol. II, See Ch. Merits of the Federal system.

CHAPTER III

TREND OF INDIAN HISTORY TOWARDS FEDERATION

THE formation of a federation depends upon the sense of national unity, the prospect of the fullest extension of fundamental rights, the possibility of an equitable economic system, considerations of defence, international prestige, the peaceful settlement of local and communal disputes and an amicable understanding upon common problems and the energies and aspirations of specific men.

Viewed in the light of Indian history, the tendency to federation can be asserted to have existed throughout the historical period. The empery of trust giving place to an allied system can be supported by facts of Indian history. This fundamental trait cannot be ignored, in spite of the undue importance given to civil wars, revolutions and dynastic changes.

Government by consent has been the accepted principle of all forms of Indian polity throughout the centuries and the conflict between the Rex and the Lex was resolved by political thinkers of ancient India, by placing Lex (Dharma) on a superior basis, from which the Indian rulers could derive their moral and spiritual support.[1]

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1. Prof. S. V. Venkateswara, *Indian Culture Through the Ages*, Vol. II, Ch. 1.
"All texts agree that the power and stability of kingship depended on the suffrages of the people."

The equality of status and function was emphasised by the earliest exponents of Indian polity in conformity with the eternal moral law.[1] The sovereignty of the people was never questioned except in the 18th and 19th centuries and the spiritual impulse of national and cultural unity has been in existence undiminished through the ages.[2] The fundamental rights of the citizens were never questioned or encroached upon by even the most autocratic emperors.

Ancient India, like ancient Greece, fixed the proportion between responsibility and privilege. Under an elastic socio-economic system, it was incumbent upon every citizen in return for the guarantee of his cherished rights, to undertake the defence of his country and maintain international prestige.

In the wake of the upheavals in the political sphere in the 18th and the 19th centuries, there was however a dislocation of the well-articulated body-politic, and the policy of the British government based in the initial stages upon economic exploitation, rather than political uniformity, brought about corresponding political chaos in the country.

The Mogul Emperor accorded permission to the East India Company to trade in India, with the greatest reluctance. In 1641 the chief of Wandiwash gave the English Company the privilege of building a fortress by investing their own money, on the specific condition that half the

1. *Rig Veda*, Vi. 75, 10; *ratvradhah.*
2. *Ramayana, Ayodhya Kanda*, 75, 24.
Cf. Aryadeva, V, 77, *Ganadasasya te darpah shadbhagena bhrtasya kah. 7.*

customs and revenue should be paid as tribute to the chief.[2] The rapid expansion of the trade of the Company resulted in the establishment of factories at Hariharpur, Hooghly and Kasimbazar, but real sovereignty was still denied to the British.[2]

After the battle of Plassey in 1757, the puppet nawabs of Bengal recognised the sovereignty of the English in Calcutta and the Twenty-four Paraganas and in 1760 the sovereignty of the British over these territories was established. The acquisition of a charter from Charles II enabled the British to enter into treaties on a footing of alliance and equality with the raja of Sawantwadi, Janjira and the subedar of Hyderabad. Until 1760, there was no policy of interference with the Indian states for the maintenance of political power.

The beginning was made with the treaty of Muslipatam which entailed a military alliance with the Nizam. The subsidiary system, the object of which was "defence without expenditure", began in 1799, when the nawab wazir of Oudh made the subsidiary treaty with Warren Hastings acknowledging positively the interference of the Company in the internal management of the country.

This policy of peaceful penetration resulted in a number of subsidiary alliances especially in the time of Wellesley, who applied this system

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1. Love; *Vestiges of Old Madras*, 1, 17.
2. *Wellesley Despatches, Letter to the Secret Committee* of the Court of Directors, dated Nov. 14, 1801.
"The extension of the influence of the British Nation without enlarging its circle of defence."

to Hyderabad, Cochin, the Maratha and the Rajputana states.

The treaty with the Nizam in 1768 specified that the British would help the Nizam whenever he called for such help, provided that it was not employed against any ally of the British.[1] Mornington further limited the sovereignty of the Nizam by stipulating in a secret Article, that no correspondence should pass between the Peshwa and the allies without the consent of both the British and the Nizam.

The same usage was consistently applied against the Peshwa in the treaty of Bassein, the Bhonsla in the treaty of Dewgaon, the Holkar in the treaty of Rajpurghar, the Gaekwad in the treaty of Cambay. Theoretically there was equality of status and the Company professed to have no intention to encroach on the sovereignty of the allies and it guaranteed full and absolute sovereignty, except in foreign policy. But all the while the Company was rising from a status of equality to paramountcy.

In the beginning of the 19th century the policy of subsidiary alliances gave place to that of subordinate isolation. The treaties now concluded extended the sphere of British power and there was no attempt at reciprocal obligation. The Rajputana states and the Central Indian states became definitely subordinate. The best example is furnished by the mediatised chiefs who were under the suzerainty of the Gaekwad of Baroda and these chiefs were confirmed in their positions by sanads, grants and ikharnamas,

1. Briggs, *Nizam*, Vol. I, Page 252.

granted by the British government and though in 1830 internal autonomy was granted to some of the chieftains, yet the sovereign rights of the Gaekwad were definitely guaranteed.[1]

The pretence of alliance and equality was finally thrown off by the assertion in 1813 that the treaty of Paris established the undoubted sovereignty of the Crown in the Company's territory. The Marquis of Hastings refused to acknowledge the Mogul Emperor Akbar II, and by the overthrow of the Maratha power completed the policy of subordinate isolation.

Bentinck came with definite instructions to restrict the activity of the states and the internal disorders were made use of to annex state after state. Coorg, Mysore,[2] Jaiantya, Oudh, Catchar, Carnool, Surat and Sindh were all annexed either on the plea of gross misrule or of lack of legal heirs, or on the uncertain accusations of intrigues.

In 1841 the Company had clearly laid down the policy of "abandoning no just or honourable accession of territory or revenue" at the same time professing to respect the existing claims of right.

Adoption could be recognised only by previous permission; otherwise escheat was possible. Nagpur, Jhansi, Jaipur, Sambalpur all lapsed but Karauli which was not a dependant state but a protected ally, was not annexed in spite of Dalhousie's proposal.

Dalhousie following the classification of Sir Charles Metcalfe attempted to distinguish bet-

1. Atchinson, Vol. V. p. 17.
2. See Appendix D.

ween quasi-sovereign states, dependent principalities, treaty princes, and sanad chiefs. He was not prepared to intervene where no immediate dependency was concerned.

Auckland insisted upon imposing on the chiefs of Oudh, a treaty which gave power of intervention in case of misrule and though the treaty was rejected by the directors, yet it was believed to be in force. But the directors deposed the King of Oudh in 1866 and thus took away his sovereignty, setting aside the principle of international law advocated by Dalhousie, who was prepared to take over the administration, while still maintaining the sovereignty of the King.

As regards Berars, however, the principle of international law was applied by leaving the sovereignty to the Nizam and taking over only the administration of the province. Thus by 1867 the doctrine of subordinate union instigated by Hastings was completed by Dalhousie. The states of India were thus brought under the subordination of the paramount power so that there was no ambiguity as to the paramountcy of the British Crown.

No pretence of invoking international law was made hereafter. All the states, after the deposition of the Mogul Emperor in 1856, became dependent upon the British who claimed to be the successors to Mogul suzerainty.

The Queen's proclamation assured the princes that all the treaties and engagements made by the East India Company would be accepted and scrupulously maintained and that the rights, dig-

nity and honour of the native princes would be respected.

In 1862 Canning declared that the Crown of England was the unquestioned ruler and the paramount power, which was readily acknowledged by the chiefs. In return for support by the government, the chiefs were expected to maintain good government and co-operate with the paramount power in the economic progress of the country. This veiled intervention reduced the princes into completely dependent states and as against the paramount power, the states had no sovereign rights, all the privileges, dignities and jurisdiction being dependent upon the will of Her Majesty.

Curzon declared that the sovereignty of the Crown had acquired a reality which was unchallenged and it only could limit its own prerogatives.[1]

"The principles of international law have no bearing upon the relations between the government of India as representing the Queen Empress on the one hand and the native states under the supremacy of Her Majesty on the other. The paramount supremacy of the former presupposes and implies the subordination of the latter."[1]

This was specially true of the created states like Mysore.[2] Kashmir had been created an independent state in 1846 and its external relations were subject to British arbitration. Though it

1. *Lord Curzon in India*, p. 227.
1. Government of India Notification, 21st August 1891.
2. *Wellesley Despatches* LXXVII and LXXVIII, Wellesley's despatch to the Court of Directors, dated 3rd August, 1799.

was claimed that Kashmir was an independent state outside the Indian political system, yet it was quite definitely a creation of the Company and in 1889 the maharaja was forced to resign.

Mysore had been administered since 1831 by a British commissioner and the rendition in 1881 was clearly based upon the principle that the prince was granted only possession and administration, and not sovereignty. Succession must be recognised by the governor-general in council to be valid. The military forces of the state were fixed, land was acquired for railways and telegraphs to be worked as a part of the British system. Though by the new grants of 1913 and 1914, Mysore has been free to legislate without prior permission, yet sovereignty is clearly denied and Article 21 asserts the right to intervene generally for good government and specifically to protect the rights and interests of the British.[1]

This assertion of the right of paramountcy was extended to other states and Curzon by persuasion and by taking advantage of minorities and appealing to the princes to be the hard-working servants of the people, made it quite clear that the relation between the states and the government of India was neither feudal nor federal, but of a type independent of the treaties.[2]

Thus the doctrine of isolation insisted upon by the Company came to be modified and the British relations with the states were guided by the principle that since all external relations were in the

1. See Appendix C.

2. Curzon, speech at Gwalior, 1899; Raleigh, *Curzon in India* p. 217; Ronaldshay, *Lord Curzon,* ii, 91.

hands of the British Government, secession and neutrality lay outside the powers of the princes and by exercising control over successions, it reduced the princes to a state of absolute dependence and was prepared to support them against internal agitation, on its own terms.

As regards the defence of India and economic schemes for the whole country, the paramount power on the plea of danger to public peace or welfare of the people, rendered the states to a position of subordination.

In judicial matters, the Crown exercises jurisdiction in every state over British European subjects,[1] and has potential rights over native British subjects also and the specified territories as in Berars, residencies, cantonments and railway lands, and where the jurisdiction is shared as in Kathiawar, Bihar and Orissa states.[2] Even here it might be necessary to receive the authority of the local political agent and in cases of grave internal disorder, the judicial power of the state might be taken away, to be restored again when peace has been restored. Therefore the residuary judiciary jurisdiction clearly lies with the paramount power.

Dr. Keith says that the Indian Foreign Jurisdiction Order-in-Council of 1902 covers the extensive power exercised in the states, the secretary of state being the supreme authority as to the existence of the extent of any jurisdiction which might be claimed in any state. Thus the

1. Insisted on against Bhopal in 1863 (Lee-Warner pp. 345 ff.)
2. K. M. Panikkar, *Indian States and the Government of India,* pages 74-75.

Parliament which does not normally legislate for the states, can still exercise legislative authority to such extent as it believes itself to have the right to legislate for persons and places in the states and the final decision in law lies only with the Crown, which alone can authoritatively decide what is British territory.[1]

Thus even in the case of those states which possess high courts which claim full judicial powers and beyond whom there is no appeal to the Privy Council, the paramount power has made considerable inroads upon the alleged sovereignty of the states in judicial matters.

1. Dr. Keith, *A Constitutional History of India*, page 224.

CHAPTER IV

PARAMOUNTCY IN PRACTICE

PARAMOUNTCY has been defined as the supreme power of the Crown defining or adapting itself according to the shifting necessities of the time and the progressive developments of the state.[1] The paramount power is the Crown acting through the secretary of state for India and the governor-general in council, who are responsible for the government of Great Britain.[2]

It is contended that paramountcy is not a theory to cover vague and undefined claims and that it cannot be a source of further authority.[3] But we have seen that the growth of British power in India has witnessed also the growth of the jurisdiction of the Crown, which the rulers themselves have acknowledged and obey without question.

The power of the Crown to determine the extent of its own sovereignty and correspondingly circumscribe that of the states, has been asserted by many Viceroys, especially by Curzon at Bhawalpur and by Reading as regards Berars.

The right of the British government to accord recognition in succession, to arbitrate in case of disputes, settlement of boundaries, and payment of compensation for land has been proved.

In 1925 the government of India refused to permit the maharaja of Kashmir to pass over the claims of the heir to the throne in favour of an

1. *The Butler Committee Report,* Para 18.
2. *Ibid,* Para 57.
3. K. M. Panikkar, *Inter-statal Law,* p. 13.

adopted son. In 1926, after the Bawla murder in which the ruler of Indore was implicated, the government forced a commission of enquiry upon the ruler but when he refused to face investigation, he was forced to resign. In 1928, the maharaja of Nabha was forced to abdicate for having used the judicial machinery of the state to persecute the subjects of the neighbouring state of Patiala and also on charges of disloyalty and sedition.

Therefore the conclusion that the relationship between the Crown and the states is one of mutual rights and obligations as urged by the princes is without basis.[1] Whether the paramount power chooses to exercise specific rights or not, not merely as a residuary body but as the source of new rights and obligations as well, paramountcy can only reside in the Crown.

It is difficult to get rid of the impression that the attempt to define paramountcy as excluding sovereignty, is mis-conceived. To define the rights of sovereignty and to confine its function (only to particular subjects like internal security) is without legal or usage basis.

As international law ceased to be applied to the states that could claim existence before the advent of the British, it is illogical to assert that:

"as each state was originally independent, so each remains independent, except to the extent

1. K. M. Panikkar, *Indian states and the Government of India*;
"Paramountcy is in essence an exceptional use of political authority in the interest of a State or pursuant to the obligations which the British Government has undertaken by virtue of treaties."

to which any part of the Ruler's sovereignty has been transferred to the Crown."[1]

Paramountcy is no doubt uniform throughout India and just as in the case of the Britsh Indian provinces, excluded areas etc., so also in the case of the states the degree of control does not necessarily mean any delimitation of Crown's paramountcy. Usage, convention and sufferance, cannot take away from the Crown its paramountcy.

Even in America, where the states' rights have been clearly defined, the states, according to Bryce, possess only one attribute of sovereignty **viz.**, immunity from being sued except by another state.[2] The analogy between the Indian states and the American states in the federation cannot hold good, because each American state makes its own constitution, provided it is republican. The citizenship of the state naturally means that of the Commonwealth.

The American states have absolute power over all the communities within its territories and hence they may be termed sovereign for certain purpose and the presumption is always in the favour of the state. Their authority is inherent and not delegated.

But this limited sovereignty does not confer upon the state, power to declare any federal act invalid, to secede from the Union, or reject the competency of the federal judiciary to decide the constitutionality of any Act. The state cannot

1. Joint opinion of the Princes Counsel.
2. *The American Commonwealth;* See Ch. The Nature of the State Government.

legally act against the constitution. Therefore, the Indian states unlike the American states can be coerced and the paramount power can interfere either with the state or with individual citizens, though normally it may not choose to do so.[1]

1. Nicholson, *Scraps of paper* See ch. *The Princes and the Machine;*

"The foreign and political department of the Government of India have superseded our treaties with the Indian States since the Mutiny. For sixty years they escaped all criticism, and became in consequence one of the strongest bureaucracies in the world."

The Prince of Wales wrote in a letter to Queen Victoria in November 1875:

"What struck me the most forcibly was the rude and rough manner with which the English political officers (as they are called, who are in attendance on Native Chiefs) treat them. It is indeed much to be deplored and the system is, I am sure, quite wrong."

CHAPTER V

SOVEREIGN CLAIMS OF THE INDIAN STATES

It was in the 16th century that the word "state" came to be employed to denote both a social situation and authority, under the influence of Machiavelli and it was invariably associated with the sovereign power of the prince. The neutral sense of authority came to be the constant element in the evolution of the concept of the state.[1]

A political system having a just correspondence and symmetry, moulding together the forces of the people but eternally unchanging, was the essence of the political philosophy of the German theorists. It stands for established order, regularity and associated effort. It is based upon consent and a duration of a state depends upon the conviction of the people. If it tries to act when there is no consent or conviction, it must use coercion and even then its success will be proportionate to the precision of the purpose.[2]

The sovereignty of the state implies its legal competence to determine its own legal rights and duty and according to Willoughby, it is indivisible and inalienable. Hence, a sovereign state

1. Bodin, *Six Livers de la Republique*, Paris, 1576, Book 1, Ch. VIII. "Sovereignty is the highest power over citizens and subjects, unrestrained by the laws."
   Treitschke, *Politicus* 1, p. 28.
   "The truth remains that the essence of the state consists in its incompatibility with any power over it."
2. Herman Finer, *Theory and Practice of Modern Governments*, Vol. 1, See. Ch. State Activity.
   "The state is generally a continuing association; it has Futurity; it is an association, immortal."

cannot be created through a joint action of two or more previously existing sovereign states. The true test of sovereignty is in the exercise of it.[1]

Dr. Keith and Laski have commented upon the disrepute into which the term sovereignty has fallen. Laski says that the rise of the sovereign state is but an incident in the political evolution, the utility of which has now reached its apogee. To locate the sovereignty in any constitution especially in a federation, is an impossible adventure.[2]

Dr. Keith however opines that sovereignty might be divisible and that in any country both internal and external sovereignty might be shared by various authorities.

Jellinek examines the notion of sovereignty on the criteria of its tasks and comes to the conclusion that the delegation of certain sovereign rights necessarily implies some loss of sovereignty. The fundamental nature of international law viz., the recognition of the equality between states without regard to the size or political importance, would be violated. Therefore constitutional and international sovereignty are one and the same and the activity of the state organ is the activity of the state itself. What is called international sovereignty is only the necessary reflex of the constitutional supreme authority towards outside powers. Therefore the state is a

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1. W. W. Willoughby, *The Fundamental Concepts of Public Law*, pp. 191-192; and the *Nature of the State* pp. 240-242.

2. Keith, *The Sovereignty of the British Dominions*, 1924 p. 1. Laski, *Grammar of Politics*, p. 53.

nation organised as a collective personality by a relationship of domination and subordination.[1]

A non-sovereign state is a contradiction in terms. Such states are legally subject and being subordinate, they cannot conclude any treaties between themselves or conduct diplomatic services. But according to Jellinek in international law such states cannot be assumed to have lost completely their international existence and the delegation of even the most important rights does not deprive that state of its sovereignty.[2]

Sovereignty is in fact the right of being able to pledge and be pledged by its own will.[3] But when such states are incorporated, they lose their state attribute and they must be regarded as new creations and at the most they can be regarded as self-governing bodies and not the holders of states' supreme rights.

Kelsen says that the sovereignty of the state means that of its law, hence every state's treaty does necessarily modify its sovereignty.[4] A treaty is an agreement between two subjects acknowledging a common law. But the legal approach to the question of sovereignty is based upon juristic dogmas like postulating on international law and the pluralists question the supremacy, the unity and the indivisibility of sovereignty in the name of particular groups or vested interests.

1. Vide Jellinek, *Die Lehre Von den Staatenvertindungen*, 1882.
2. Jellinek, *ibid* pp. 49-52.
3. Jellinek, *Ibid* pp. 57.
4. Vide Kelsen, *Das problem der Souveranitat und die theorie des Volkerrechts* and *Allegiance Staatslehre* pp. 104-105.

Sovereignty being a quality, says Herman Finer, is obviously one and indivisible as a quality. But at the same time it can, inhere in many things, have many embodiments and all the criticisms as to the indivisibility of sovereignty can, on analysis, be shown to refer only to its distributive but not collective function.[1]

The state is a territorial association in which the social and individual forces try to control the government vested with supreme legitimate power. The government is the custodian of that power, which is necessary to support and arbitrate between conflicting claims. Hence in spite of the attack on the Austinian conception of sovereignty as indivisible and unitary, it is clear that though sovereignty might of itself delegate some powers, there is no diminishing of it.

The acid test of neutrality and secession have not been applied even in the case of the Dominions. The sovereign power possesses full right to make its own constitution, to exercise authority over every class of its inhabitants and to regulate its political status.

In international law, sovereignty means a well-ascertained assemblage of separate powers such as the right to make war or peace; to administer civil and criminal justice.

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1. "The identity of the state resides not in any single transcendant personality but in a single organising idea permeating simultaneously a number of personalities. As for this, so for all Fellowships; there may be oneness without the transcendent one."

   (Baker, the *Discredited state,* Political Quarterly, Feb. 1915, P. 111.)

The opinion of Messrs. Eddy and Lawton that sovereignty is divisible but independence is not, and that Indian states have quasi-international status[1] in their relationship with the paramount power cannot be sustained, according to the juristic conception. Sovereignty can confer only a certain competence upon the subjects and groups, and the possession of coercive authority ultimately differentiates a sovereign state from subject states.

Therefore the sovereignty of the Indian states is merely formal. Prof. Westlake says:—

> "It is absolutely necessary for the defeat of those designs (the subversion of the British Empire in India), that no Native State should be left to exist in India which is not upheld by the British Power or the political conduct of which is not under its absolute control."[2]

The international status of the Indian states has been definitely repudiated by the circular No. 1700, E. 21st August 1891. Westlake is of the opinion that the native princes, who acknowledged the supremacy of imperial Majesty have no international existence, and that "their Dominions are contrasted with the Dominions of the Queen and that their subjects are contrasted with the subjects of the Queen" are niceties of speech devoid of international significance.[3]

The term "protectorate" as applied to the Empire in its relation to those princes, and the

1. Eddy and Lawton: *India's New Constitution.*
2. *Collected papers of John Westlake on Public International Law,* 1914, p. 205.
3. *Ibid,* pp. 220-222. Also Vide Moore, John Baselt, *Digest of International Law,* Vol. I, p. 17.

description of their subjects when abroad, as entitled to British protection, is etymologically correct, but it does not bear the technical meaning which belongs for example to a protectorate in North Africa.[1]

Loyalty and allegiance as expressing duty to the Queen Empress, treason and rebellion as expressing the breach of that duty, are the terms employed in Indian official language.

Similarly, Lawrence holds that the Indian princes are not even quasi-sovereign. Part-sovereign states may be defined positively as political communities in which the domestic rulers possess a portion of powers of sovereignty, the remainder being exercised by some external political authority or negatively, as states which do not possess the absolute control of the whole of their policy, but no such state is a subject of international law, unless the division of powers cuts athwart external affairs, assigning some of them to the home government and some to outside authority.[2]

Such part-sovereign states may be divided into two classes. First, those states which have surrendered their external sovereignty and thus possess partial sovereignty in internal affairs also; in the second class being those communities that have joined a confederation and are controlled by a central authority of the confederation, and thus may be called part-sovereign for international purposes.

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1 Lawrence T. J. *The Principles of International Law,* 1915, pp. 62-63.

2. Lawrence, See pp. 62-63.

Metcalfe's classification of some states as quasi-sovereign is unjustified because in reality no Indian state is even part-sovereign as understood in international law; for, they may not make war or peace or enter into negotiations with any power, except Great Britain.

Similarly, Hall says that in the case of the protected states like those included in the Indian Empire, though theoretically in possession of internal sovereignty and though their relations are defined by treaties, in cases of dispute the residuary jurisdiction is supposed to exist on the part of the imperial government and the treaties themselves are subject to the reservation that they may be disregarded, when the supreme interests of the Empire are involved or where there is gross misrule.[1]

The treaties are therefore certain statements of limitations which the imperial government has placed upon its own actions. Therefore the contention of the protagonists of the states, that they are the "donors" is as much a fiction as the British claim to have succeeded to the Mogul imperial authority.

We shall next examine the claim of internal sovereignty made by the Indian states. The common allegiance to the Crown may be ex-

1. Hall, William Edward, a *Treatise on International Law* VII Ed. 1917, p. 27.
Imperial Gazetteer of India, Vol. IV, p. 88: "Liability to intervene in case of gross misrule is an incident common to all the states."
Hunter, Sir William, *Indian Empire,* 1892, p. 76; "It interferes when any chief misgoverns his people; rebukes, if need be, removes the oppressor, protects the weak; and firmly imposes peace upon all."

pressed in two ways, either loyalty to the person of His Majesty, which is the only bond linking together the various nations of the British Commonwealth, or, not as a personal union but also the common citizership that results from that allegiance binding together the nations of the Empire. As between the United Kingdom and the Dominions, which are equal in status and in no way subordinate to one another, united by a common allegiance to the Crown, the position is not materially altered even if any limitation of internal autonomy is attempted to be based on citizenship.

The test proposed by foreign jurists to determine whether the Dominions are completely autonomous is secession. In the federal constitution of the United States, which was a voluntary organisation in its origin, the right to secede has been successfully opposed. In the case of the Dominions the association with the United Kingdom has not been voluntary. Eire though completely asserting its sovereignty in internal matters is still technically under the control of Great Britain as regards its foreign relations.

In the same way, the issue of neutrality is also unsolved and the claim of the Irish Free State to neutrality has compelled de Valera to admit that the neutrality of the state in the event of war, would not be respected by any foreign power. Therefore internal sovereignty, though it has acquired a new connotation by the Statute of Westminster in 1931, yet in the case of the **"British Coal Corporation versus the King,"** the Privy Council decided that the imperial Parliament was in theory incapable of parting with its sove-

reignty and could repeal the provisions of the Statute of Westminster itself, though through that statute the Parliament has laid some restrictions upon its own power, such as recognising the power of the Dominions to legislate with extra-territorial effect and declaring that no Imperial Act would apply to any Dominion, unless it had also assented to the enactment.

And the case of Ireland shows clearly that secession could be effectively accomplished only by bilateral action and hence "the theoretic right of secession is of little consequence". Therefore even in the case of the Dominions, the Statute of Westminster does not assure complete internal sovereignty.

Hence the claim that direct relations with the Crown and not through its representatives is the prerogative of the Indian state, cannot be maintained. When the transfer to the Crown was made in 1857, Palmerston said that India should be placed under the direct authority of the Crown to be ruled in the name of the Crown, by the responsible ministers of the Crown, sitting in Parliament and responsible to it, and to the British public for every act.

Any allegiance to the King may be differentiated from the political relations with the King. In the latter capacity, the King acts through his ministers responsible to Parliament. The secretary of state for India, as the official superior of the governor-general in council, is a member of the cabinet, responsible to Parliament and hence the distinction between the Viceroy and the

governor-general cannot be invoked. The support of the view that the Viceroy alone can have political dealings with the states, since he functions as His Majesty's representative, is that it is merely for ceremonial occasions. The political relations of the Indian states can only be through the political department and the governor-general in council with the Crown as the political head of the United Kingdom.

The states are clearly subordinate to the government of India which is responsible for all the revenues, including tributes from the Indian states.[1] And also the governor-general's previous sanction is necessary for some Acts that may affect the relations of the government with foreign powers or states.

Therefore internal sovereignty regarding Indian states is absent, when the government of India clearly claims the right to decree deposition, settle succession, assume wardship, and recognise and limit the grant of titles. The contrast between Nepal, for example, which is a completely independent sovereign state and an ally of Britain with equal status inspite of secession of territory, and the Indian states shows that even internal sovereignty cannot be claimed.

Taking the claims of sovereignty as a whole, these principles are well established: the foreign relation are entirely in British hands; the British government is bound to take certain measure of interest in internal administration; each state is compelled to facilitate defence and to aid econo-

1. Vide, Sir P. S. S. Iyer, *Indian Constitutional Reforms* Ch. Indian states.

mic schemes for the welfare of the whole country and the paramount power has inherent right to decide finally all matters of ceremonial, precedence and salute.

CHAPTER VI

CLASSIFICATION OF STATES

INDIAN India outside British India, occupies two-fifths of the sub-continent and has one-fifth of the total population. The states number 562 and vary greatly in the extent of power, status, honour, responsible government, population and nature of their origin.

A classification of states upon rigidly logical lines is almost impossible and therefore no generalisation except that all are entirely dependent upon the paramount power, can be made. We can adopt several methods of classifications and also point out their short-comings.

I. On the salute basis, the states have been classified thus:—[1]

Guns.	States
21	4
19	7
17	13
15	17
13	10
11	31
29	36

Some rulers have been accorded personal salutes: 11 guns-1 state; 9 guns-6 states. Thus together 128 states.

The defect in this classification has been pointed out by Lord Irwin, who says that the autonomy of each state cannot be judged on the salute basis and the fundamental distinction between the

1. See Appendix F.

more important states and the remainder is not clearly brought out.

II. Taking the population basis, there are 34 states having unrestricted civil and criminal jurisdiction and the power to make their own laws with a minimum of 3 lakhs of population and other states having less than 3 lakhs.[1] The defect of this classification is that some of the sparsely populated states appear to have greater judicial and legislative powers, while in others as in the Kathiawar states the jurisdiction is shared with the British government.

III. A third way of classifying the states advocated by Prof. G. R. Abhyankar, is on the basis of full civil and criminal jurisdiction within the territorial limits. 61 such states fall also in the salute list, but Rutlam and Sirohi do not come under the definition of sovereign states in this sense.[2]

IV. The fourth basis of classification might be according to states which are "donors", having existed prior to the advent of the British power and those states "created" by paramountcy. The advocates of the Indian princes claim that Baroda, Gwalior, Udaipur, Nawanagar, Tripura and Alwar, were the donor states.[3] But Mysore, Kashmir and Satara were created states. This classification attempts to create a split among the states themselves and is justly resented.

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1. See Appendix G.
2. G. R. Abhyankar, *Problems of Indian States*, page 315.
3. Chamber of Princes, *The British Crown and the Indian States*, Page 82.

V. Accepting a purely mechanical classification on a geographical basis we have:[1]

(i) Rajput states, including Kashmir, Orcha and Rewa.
(ii) Hyderabad and the Muslim states, including Hyderabad, Bhopal, Bhawalpur, Khairpur, and Rampur.
(iii) The Maratha states including Baroda, Gwalior and Indore.
(iv) Mysore and Southern Indian states, including Travancore and Cochin.
(v) The Orissa and Feudatory states whose rulers do not enjoy full political jurisdiction.

This method adopted by Sir William Barton though convenient, is clearly illogical because religion, geography and extent of political jurisdiction are all taken as basis.

VI. Dr. Keith[2] seems to adopt the classification of the states according to the degree of their relationship with the government of India. Hyderabad, Baroda, Mysore, Jammu and Kashmir, Gwalior, Bhutan and Sikkim have got immediate relations with the government of India. The Baluchistan states like Kalat, have got an agent of the governor-general. The agent of the Central Indian Agency is responsible for 28 major states like Bhopal, Bundlekand, and 69 non-salute states.

In 1933, the Deccan States Agency controlled by the Bombay Government, including 16 small

1. Vide Sir William Barton, *The Princes of India.*
2. Keith, *Constitutional History of India,* 1935, p. 441.

states and Kolhapur, the Eastern States Agency controlling 40 states including Ramgar, Bastar and Kalahandi and the Gujarat States Agency controlling 11 greater and 17 non-salute states, were created. The Madras States Agency including Travancore and Cochin, was created in 1923 and the Punjab States Agency formed in 1921, controls 14 states including Bhawalpur, Patiala and Khairpur.

The Rajputana Agency has jurisdiction over Bikaner and Sirohi and 22 other states are controlled through the residents. The Western Indian States Agency created in 1924 has 60 salute states and 236 non-salute states and estates. Further a small number of states are in direct relation with the local governments. The governor of Assam deals with 16 small states: Bengal with Coochbihar and Tripura: Punjab with 18 Simla hill states: and the United Provinces with Rampur, Benares, Tehri and Gharwal. This classification also does not bring out the exact status of the states.

VII. Another classification of states as allied, tributory, created and protected is mentioned by Lee-Warner but dismissed as illusory.[1] Hyderabad, Gwalior, Indore and Udaipur were called allied states; the tributory states being Sunth etc.; the protected states were Rewa, Cutch, Tonk, Bhopal, Jodhpur, Bikaner, Dewas, Jaipur; the created states being Mysore, Satara, Tehri and Kashmir. But no state can claim to be an ally of the British government on a basis of equality.

1. *Vide* Lee-Warner, Sir William, *The Native States of India.*

No distinction can be made between an ally and a created state from the point of view of the paramount power.

VIII. Sir Charles Metcalfe classified the states as quasi-sovereign, mediatised, treaty states and sanad chiefs. Dalhousie also accepted this classification. But with the assumption of the government by the crown in 1857 this classification becomes obsolete.

IX. The Chamber of Princes has been organised on the basis of a classification according to states having treaties on equal footing as allies or having sanads creating the states and petty states having no full powers of justice. Therefore the membership was fixed according to states which have full powers i.e., 108, and non-salute states 127 (represented by 12 members elected by the princes from among themsleves) and estates and jahagirdars formed into groups; but this classification though adopted by the Butler Committee, is quite unsatisfactory and therefore the representative character of the Prince's Chamber is questioned. Some of the states like Hyderabad, Mysore, Travancore, Cochin, Baroda and Indore which possess representative assemblies are not represented in the Chamber. And some of the states whose total population exceeds thirty million are not represented at all.[1] Therefore the Chamber can lay no claim to reflect the views of the people of the states or even of all the princes.

X. Sir Leslie Scott advocates the classification of the states according to treaties, engage-

1. P. L. Chudgar, *Indian Princes under British Crown*, p. 139.

ments, sanads, usages, sufference and other causes. But taking political practice as the criterion, an analysis of the various treaties, engagements and sanads shows that out of 108 states which fall in the salute list, 32 have treaty obligations, 37 controlled by political practice, 20 states as in Kashmir with very limited sovereignty, 3 states entirely regranted by the British government, one state which is a grant of the British government, 7 mediatised chiefs, 7 states with treaty rights but in subordinate cooperation with the British government and one state viz., Benares created in 1928. This analysis shows how sovereignty of the princes even in domestic matters is circumscribed.

XI. But the most useful classification apart from political practice, from the point of view of the Indian nation, would be according to the amount of the real progress towards democracy achieved in the states.

The separation of powers and the existence of fundamental rights of citizenship are the two criteria of political progress. From this view-point only in 56 states the princes have fixed privy purses; only 30 states like Hyderabad, Baroda, Mysore, Kashmir, Bhopal, Travancore and Cochin have the rudiments of legislative councils and representative assemblies of purely consultative character, and in no case is there a constitution binding on the ruler. Only in 34 states a distinction but not a separation of the executive and judicial powers is made. About 40 states have got high courts, but the state judiciaries are under the complete control of the rulers. As

regards civil lists, only 46 states have started regular graded civil lists of officials.

There is no rule of law in many of the states and the states' subjects cannot appeal to the paramount power. By perpetuating such states and guaranteeing them support in case of internal and external disturbances, the paramount power is denying the ordinary rights of citizenship in a civilised country to the states' subjects.

With the advent of provincial autonomy in British India the position becomes still more anomalous. Dr. Keith says that the paramount power cannot logically maintain the view that the Indian states should deny their subjects, the right to advance in political status. The Crown should endeavour by the use of its authority to secure the gradual extension of political rights to the states' people.[1]

1. Keith, *A Constitutional History of India*, page 444.

CHAPTER VII

ECONOMIC EFFECTS ON THE INDIAN STATES

INDUSTRIAL renaissance in India, as a result of the economic contacts established with Britain and the outer world, naturally affected the princes also and this economic penetration during the last half a century has resulted in a considerable diminution of the internal sovereignty of the states.

Until 1870 the British Indian provinces had no specific allotments of their own and made no contribution to the central government, but the states had to pay tribute in some cases in addition to cessation of territories. The monopoly of the government of India as regards railways, posts and telegraphs and certain claims of indirect taxation naturally compelled the states to part with a measure of their just dues.

The policy of subsidiary alliances and the establishment of military cantonments, and railways were specially intended for strategic purposes. Almost every treaty stipulates that the ruler should grant as much land as may be required in the construction of railways and transfer full jurisdiction within such lands, thus limiting the judicial independence of the state.

Telegraphs are exclusively managed by the British, only Kashmir having independent lines. As regards posts, Tranvancore, Hyderabad and Cochin have their own systems and some states like Gwalior, Patiala and Jind have made special

arrangements on the quota system. Thus gradually imperial authority has been extended and independent states have become the constituent members of the Indian polity.

Similarly, as regards coinage, one of the attributes of sovereignty, only Hyderabad, Udaipur, Travancore, and some Rajputana states have got separate coinage, but only Hyderabad makes any profit. Here also the tendency is to abolish separate coinage in order to bring about economic uniformity and therefore the separate coinage of Mysore was not allowed to be revived after the rendition. The universal currency of the British rupee is one of the main symbols of British paramountcy.

Income-taxes under the existing arrangement are assigned to the central revenues in contrast to the practice in other federations. The Indian government has made no exemption in case of incomes arising in British India and due to the Indian states or other states, while permitting exemption of income-tax to the pensions and interest on public debt paid in Great Britain. Therefore this is contrary to international law.

No Indian state is permitted to levy the income-tax on the pay of the British officials. The states feel that they have been invidiously treated when the government has permitted exemption in the case of non-Indian domiciles. A discrimination is also made between the investments of the provincial governments and those of the states, the former being exempted from taxation.

Except in Mysore, Baroda and Patiala, no direct tax has been imposed because it would

affect adversely the efficiency of state officials or would affect industrial expansion in their territories. Thus the states are compelled to lose some of the best men who prefer to migrate, if their incomes are heavily taxed.

As regards customs duties, the central government claims all the revenues. The maritime states like Travancore, Baroda, Cutch, and Cochin have established customs conventions but few states have specific commercial treaties. The rigorous policy of free trade affected the revenues of the states from this source. During the War, however, the states conformed to the policy of the central government and did not object to the revision of the fiscal policy. The treaty of Hyderabad assigns a fixed customs dues as suited to its convenience. No more than a five per cent duty could be levied at Hyderabad according to Article V, on all articles indiscriminately imported to the state from British India. Double taxation was prohibited and the duties were regulated on an **ad valorem** basis, and they were to be fixed and immutable and could not be changed except by the mutual consent of the contracting parties.

The Travancore durbar has entered into a convention by which the state is compensated for its loss of sea-customs by a consolidated sum. Mysore has no customs duties of its own. Baroda has abolished transit duties and exempted supplies for the British troops from its own customs on a reciprocal basis.

Kashmir according to the treaty of 1870 has abolished transit duties, while the British gov-

As regards salt, the general monopoly is vested in the government according to the treaties, a fixed compensation being paid to the state. Due to the development of the means of communication, the salt revenue is now about 8 crores per annum or four annas per head. The states claim that about 2 crores of this revenue are justly due to them. But they are compensated with only 36 lakhs. It has been argued by Sir John Strachey[1] that the states must make larger contributions for the maintenance of peace and tranquility in India and for the general expenses of the Empire. Only in case of salt Hyderabad, the Punjab states and some others derive their supplies from sources where the British duty has been levied and thus their states make some contribution to the British revenue. But the states pay also tribute and have ceded territories and therefore those states at least which have natural salt resources must be properly compensated for surrendering their source of revenue.

Opium which was once a considerable source of revenue to the states has become a monopoly of the British government. In 1826 Indore, Dhar and Dewas, gave the British government the exclusive right of purchasing all the opium. The policy of the government of India to stop the cultivation of opium by 1937 under the plea of humanitarian considerations, has resulted in great financial loss to the states which have demanded the abolition of **pan** duty and an equal share in the Bengal opium market, the freedom to export to markets outside China and to establish their own factories to manufacture alkaloids.

1. *Vide Finance and Public Works in India,* Sir John Strachey.

The railway policy has given rise to inter-statal conflict. The states have provided land free of cost and have sacrificed their transit duties on goods passing through their territory and have surrendered jurisdictions over those areas. The treaties however, vary regarding the exact nature of the jurisdiction ceded and also regarding the terms and conditions on which the apportionment of profit is made on the capital invested by them.

Baroda surrendered full sovereignty over such lands, including criminal jurisdiction. The Holkar similarly placed the management of the land exclusively in the hands of the government of India for a period of 101 years in return for the interest at the rate of 4½ per cent. and half of the net profits on 1 million sterling.

The gross revenue from all the railways is approximately 110 crores, out of which the states claim about 27 crores. But they get nothing from the railway surplus. They have sacrificed the transit duties and they are not consulted in fixing the railway rates. Nor are the states people given adequate representation in the railway services. Therefore the states have claimed adequate representation on the Railway Board and adequate compensation for their losses.

The states case can be summed up as regards liability for defence, war debt, communications, posts and telegraphs, public works, customs and tariffs, excise duties, salt monopoly, currency and mints, and income-tax thus:—

1. Defence.

The paramount power can discharge its obligations to the state by preserving the external and internal security, because of the army. The states have no control over the foreign policy which may land them also in war with foreign powers. Under the present conditions, whether the states have contributed or not to the causes that bring about war, they must come to the assistance of the British Empire. In return for the liability, the Crown guarantees the security of the state and under this contract the states have to pay a heavy contribution for the maintenance of the British army, and it is contended that the existence of subsidies does not even involve any general obligation to assist the paramount power.

Lee Warner asserted that because the paramount power has undertaken to protect the states, there is a corresponding obligation on the part of the states to supply troops in time of war and he says that the onus of defence in time of war is automatically transferred to the states. No doubt, the treaties with Udaipur, Bikaner, Jaipur, Patiala, Bhopal, Nabha, Kashmir, Kishanghar, Banswara, Dungarpur and Datia stipulate that the troops of the states should be placed at the disposal of the British government when requisitioned and from the actual relationships that exist between the Crown and the states, there can be no inference of a general obligation on the states to contribute to the general expenditure of the British army. The states ceded lands and made definite payments in the

form of tribute and subsidies and therefore no additional burden can be imposed upon the states. The states provided 53,693 infantry and 20,148 cavalry in the Great War.

As regards war debt also, a part of the interest payable on the debts of the state is reckoned towards the cost of defence and it is illogical to ask the states to pay for their own defence when such defence is guaranteed by the Crown.

II. Communication

Railways, roads, posts and telegraphs are primarily employed for strategic purposes, e.g., the Mysore lines do not follow the natural trade channels. A definite loss of about Rs. 4.68 lakhs is revealed according to the budget estimates of 1939-40.

The states cannot be made liable for this deficit, since posts and telegraphs are largely employed for strategic and administrative purposes. Though the states are held responsible for the loss of registered parcels, they are not compensated by any of the portion of revenue derived from the registerd parcels.

The states with about 3,000 miles of railway lines contribute 135 lakhs, but they are treated by the Railway Board with contempt and denied the right to make their views heard.

III. Public Works

The water rights of the states have been encroached upon by the government schemes; for

example in the Kishanghar state large areas have been drained away to supply the Sambar salt lake and the Bharatpur durbar undertook irrigation works but the United Provinces government refused water from the Agra Canal and no compensation was made.

IV. Customs and Tariffs

A discrimination has been made between Kashmir and Kathiawar states and other states because of peculiar geographical circumstances. To work out the incidence of double taxation on the states people is very difficult because of the lack of reliable statistics. According to the Review of the Trade of India 1926-27, the states contribution for customs revenues was as follows:—

THE STATES CONTRIBUTION TO CUSTOMS REVENUE

	Lakhs in Rs.
Total sea customs paid by the states	731
Total customs revenue (import, export and other duties)	4,738
Percentage of total paid by the states	15.4%
Total cost of collection and other charges	8 %
15.5% of cost	12.5
Net customs duties paid by the states	718
Deduct 77.5% of refunds paid to certain states	12
Net contribution of states customs revenue	706

STATES SHARE OF CUSTOMS REVENUE IN PROPORTION TO POPULATION

Total Import duties	3,996
Gross share of states in proportion to population	899
Cost of collection	15
Net share of the states	884

The states contribute to the customs revenue 706 lakhs. There are many hardships such as having no say in the tariff policy of the country.

As regards the excise duties, about 39 lakhs are contributed to the central government. Some minor states which made arrangements to give up their excise revenue in return for a consolidated sum have now felt that they made a bad bargain, because of the general rise in prices and the high rates of duty.

V. Salt

The states' people have to contribute about 90 lakhs towards the salt revenue. But the states have no voice in controlling the salt policy and have been prevented from developing their own resources and were even required to destroy the natural salt found in their territories.

VI. Currency and Mints

The princes reckoned the right of coinage as a symbol of sovereignty. Between 1873-1893 the government closed the Indian mints of silver and the value of the rupee is above the silver content by six annas. The states have suffered considerably from the fluctuations in the price level. But they cannot claim any profits of currency and have no voice in determining the fiscal policy. The states claimed 22.5 per cent from the profits on coinage and 12.6 per cent from the profits on paper currency. According to the figures for 1928-29 the net revenue from the coinage was 22.3 lakhs out of which 5 lakhs were claimed by the states, and out of the net revenue of paper

currency of 173.5 lakhs the share of the states should be 21.9 lakhs.

VII. Income-tax

The subjects of the states holding investments in a province, are liable to double taxation and therefore there is a just case for granting relief in this respect.

The Chamber of Princes during 1937-38 referred the question of the restrictions imposed on the manufacture and export of salt to a committee, and also came to the conclusion that no restriction contrary to the treaty existed as regards water rights. The chamber decided that the sections 132 to 134 of the Government of India Act offered a reasonable compromise.

To conclude, the total contribution of the states is Rs. 1,044 lakhs, including sea customs 706 lakhs, salt 93 lakhs, railways 120 lakhs, currency and mints 80 lakhs and excise 39 lakhs. This huge burden has naturally reacted upon the economic progress of the states. Since the proceeds are not spent within the states, the states' people do not benefit. Therefore the corresponding compensation should be made if the states should develop their full economic resources and stand worthily besides the British Indian provinces.

The financial obligations between the federating states and the federal government will be determined to an appreciable extent by the terms embodied in the individual instrument of accession of each state.

The states under the Government of India Act, 1935, have to contribute to the federation the revenues from:—

A. Taxation (a) normally

(i) Customs duties

(ii) Export duties

(iii) Excise duties on commodities other than alcohol, opium, hemp etc.,

and

(iv) Corporation tax.

(b) In abnormal times:—

(i) Surcharges on income-tax.

B. Direct or indirect contributions:—

(i) Fees in respect of items in the federal list

(ii) Profits from postal savings banks, federal railways, mint and currency, and other federal business like the Reserve Bank.

(iii) Subsidies etc., under the state treaties.

Further, section 104 gives the governor-general the power to impose new taxes at his discretion.

Some of these clauses are vague and inept and reveal a marked discrimination in favour of the provinces. Deficit provinces will be given subventions from the federal revenues, whereas

the states in debt can expect no such relief. The states pressed their claim that they should be exempted from the expenses incurred in respect of subsidies to deficit provinces as they had to bear special defence burdens.

The Niemeyer Award confers some positive benefits upon the provinces. No such windfall will change the bumpy prospects of the state finances. The states make themselves further liable to the surcharges for federal purposes.

Under sections 138 to 139 or by the provisions under section 125, the states may agree to pay a lump sum in respect of tax receipts collectable in their jurisdiction and thus avoid the interference of the federal authority. Some states which levy customs or excise duties of their own, may have to abandon this ancient right, as sections 147 and 149 provide for certain refunds or remissions of state dues for the surrender of "privileges and immunities".

Maritime states on entry into the federation are safeguarded their customs rights and yet are permitted to be compensated for the surrender of such rights. States where industrial advance has made considerable lee-way will be subject to federal excises on the industrial output in their territories. The system of inter-statal tributes will become too obsolete when the creditor states join the federation. The British government may intervene and secure its abolition. If the federated states contemplate the erection of new customs cordons, the governor-general may use his special powers to break down the barriers that hamper free interchange.

The clauses relating to the financial position of the federating states are as complicated as they are inadequate. The additional burdens will dry up the slender revenues of the states at their very source itself. The stability of the major states will be reduced to a mere shadow and the weaker states will go to the wall.

CHAPTER VIII

PRELUDE TO THE GOVERNMENT OF INDIA ACT

THE movement for an all-India federation is of quite recent date, though the tendencies can be discovered even before the advent of the British power.

In the last quarter of the 19th century, since the time of Lytton, attempts were being made to bring the Indian states into some sort of contact with British India. With the growth of the national spirit, due to the activities of the Congress, a common government for the whole of India was put forward as the national objective. The National Congress in 1899 resolved to promote by constitutional means, the interests and well-being of the whole nation and it expressed its sympathy towards those native states like Mysore where there was a measure of constitutional government and was of the opinion that no Indian prince or chief should be deposed on the ground of mal-administration or until his conduct shall have been established to the satisfaction of the public tribunal, which should claim the confidence alike of government and of Indian princes and chiefs.

It urged the ruling princes of the Indian states to introduce responsible government and to enact laws regarding elementary rights of citizenship. The Congress assured the people of the Indian states also of its sympathy and its support in their legitimate struggle for the attainment of full responsible government in the states.

The suggestion for a federation seems to have been first made by the Gaekwad of Baroda in 1917 in a memorandum submitted to the Viceroy, but the Montague-Chelmsford Report did not urge it, perhaps because it was not immediately practicable. Partial responsibility had been given to the British Indian provinces and the institutions in British India were liberalised. The policy towards the Indian states had also changed and the paramount power had the discretion and could interfere within the internal affairs of the state for the benefit of the state or its subjects or the whole of India. Even in 1930, the Simon Commission thought of an all-India federation as a distant goal. But Sir John Simon asked for the permission of the Prime Minister to deal with the future relationship between Indian states and the British Indian provinces and suggested the convening of a Conference.

The maharaja of Bikaner immediately seized upon the idea and announced that he "looked forward to the day when the princes and the states would be in a position of absolute equality with the federal provinces of British India." The establishment of the Chamber of Princes had gone a little way towards affording a common platform for the discussion of subjects of common interests among the princes.

The Simon Commission discussing the view that some form of federal association was necessary advocated as a preliminary step, the establishment of a council for greater India, consisting of the representatives of the Indian states and British India with the Viceroy as the presi-

dent, with powers to discuss and record decisions on matters of common concern.

At about the same time, the Congress appointed the Nehru Committee which submitted its report in July 1928. The Report, after stressing the need for a common constitution for the whole of India, insists upon the fact that the states are in direct relation, not with the King in person, but with the King-in-Parliament. It provides that all the treaties made between the East India Company and the Indian states and all such subsequent treaties, so far as they are in force, shall be binding upon the Commonwealth and that the Commonwealth should exercise the same rights in relation to and discharge the same obligations towards the Indian states as was done hitherto by the government of India.

The practical question of the preservation of treaty rights and such independence as the princes have enjoyed or claimed, is far more important than the purely academic discussion of the question whether in theory the relations are with the government of India or with the Crown.

While recognising that an Indian federation is compatible with the maximum degree of autonomy in the local units, whether states or provinces, which can be the only solid foundation for responsible government, the committee was not prepared to wait for full responsible government or Dominion status until the Indian states chose to join the federation. Such delay would only mean that the Indian states while professing their sympathy with progress in British India, must effectively defeat the aims and aspirations

of British India by an attitude based, not on enlightened self-interest, but on positive hostility.

In August 1928, the all-Parties Conference under the chairmanship of Sir M. Visvesvaraya considered the Nehru Report but because of the opposition from the Muslim League, its resolutions were not given effect to.

The next stage according to the Marquis of Zetland, is the series of private discussions that took place between the princes and their advisers on the eve of the first Round Table Conference, and in November 1930 the announcement was made on behalf of the princes that they were prepared to consider the immediate establishment of a federal form of government in which they would have a share. This was a pleasant surprise for the Conference and when the second Round Table Conference met in September 1931, the White Paper was presented to the Parliament embodying the three principles of federation, central responsibility and safeguards.

The Parliament gave its approval in December 1931 and towards the close of 1932, the third Round Table Conference met and the White Paper proposals were issued on March 15, 1933.

A joint committee was appointed and the government of India Bill was drafted. The Government of India Act, 1935, was passed by Parliament on August 2nd.

CHAPTER IX

GOVERNMENT OF INDIA ACT AND ITS CRITICISM

THE Government of India Act of 1935 inaugurates a kind of federation, which in its outer form presents all the normal characteristics of a federal government. In a sense this Act makes a great departure from the previous policy, by converting a unitary state into a federation.

As against the Bavarian school of federalism, the Act accepts the model of Canada and Australia but there are so many anomalies that are almost irreconcilable. Neither the British provinces nor the states had hitherto any international status. The British Indian provinces, however, being directly controlled by the government, had no choice, whereas the states could join the federation, when the ruler signifies his acceptance of the instrument of accession.

A rigid written constitution, the allocation of federal and local powers and the establishment of a federal court have been outlined and the amendment to the constitution is very much restricted.

The federation is composed of the British Indian provinces and those rulers who may accede to the federation. Though the Act is the work of the Parliament, which has control over the British Indian provinces, yet the federation can have authority over the states only by deriving its power from the Crown. The rulers claim that, since the Parliament does not legislate for

the states, it has no authority over those states which might choose to join the federation.

Under the Act, all the powers exercised by the governor-general in council over the states until then, now revert back to the Crown and therefore a distinction is made between the Viceroy and the governor-general.

Upon the assumption that the states enjoy semi-sovereignty, (because the paramount power exercises no control over state territory, courts, police, coinage and states subjects, when residing in the states) the Act makes the rulers the donors to the Crown of some powers over specified subjects.

Again, the system of diarchy which had been universally condemned, has been introduced in the centre and the governor-general as regards special responsibility.

> "To prevent any grave menace to the peace or tranquility of India or any part thereof, to safeguard the financial stability, the legitimate interests of minorities and of members of public services, to prevent discriminatory or penal legislation regarding foreign goods, to protect the rights of any Indian state and the rights and dignity of the Rulers."[1]

In the exercise of these functions the governor-general is left to his individual judgment. As regards the special responsibility for the protection of the rights of any Indian state, it was explained in a White Paper that it was intended to provide a means of securing for the rulers the recognition of their personal status.

As regards the instrument of accession, the rulers claim that it was in the nature of a treaty. But the secretary of state rejected their claim by making it clear that the Crown assumed no obligation except as regards those specific subjects mentioned in the Act. Therefore when the Crown accepts the instrument of accession, a state renounced whatever rights it may have had in respect of a power transferred to the federation, in favour of the federation.

Thus the object of the rulers to increase the sphere of their own sovereignty and at the same time compel the Crown to guarantee protection of their rights, was defeated.

Again the rulers claimed that their position in the federation should be governed not by the Government of India Act, but by the instrument of accession which they had accepted voluntarily. This claim was rightly rejected because then there would be no federation at all, but merely a confederation; and though the instruments of accession might be drafted more or less on the same model, there would still be a source of law causing great confusion. Therefore the fact that the Government of India Act will be operating in the states also clearly sets aside the claims of the princes to have the relationships directly with the Crown, since the Parliament has been responsible for the Act.

A. The Instrument of Accession

The instrument of accession[1] lays down the conditions and limitations regarding political obli-

1. See Appendix A.

gation and property rights to be enforced after accession. This is contrary to the spirit of equality that should prevail among all the units of federation.

Regarding the legislative relations between the federation and the provinces, Sec. 101 lays down that nothing in this Act shall be construed as empowering the federal legislature to make laws for a federal state other than in accordance with the instrument of accession of that state and any limitations contained therein.

"In the case of conflict between a state law and a federal law, if any provision of a law of a federated state is repugnant to a federal law which extends to that state, whether passed before or after the law of the state, shall prevail over the state law."[1] This means that the federal jurisdiction will go on increasing so that at some future time the federal law will prevail throughout India. But the difficulties placed in the way of the amendment of the constitution make the Act too rigid and the instrument of accession cannot be affected, except according to the specified schedule in the Act.[1] This schedule was introduced so that the Parliament should have greater liberty to change the provisions relating to British Indian provinces but not those that affected the states.

This therefore conflicts with the general trend of the extension of Parliament's power and it is clear that the basis of the present federation is the agreement by the instruments of accession. Mr. N. S. Varadachar is inclined to take a gener-

1. Vide *The Government of India Act,* 1935 Sec. 107.

ous view and treat the clause as merely procedural. But it is open to any ruler to insist upon the contract and make any amendment to the constitution impossible.

As discussed before, the question of sovereignty is bound up with that of secession. The instrument of accession clearly says that the states accede only "for the purpose of this federation." In the case of a breakdown of the constitutional machinery, the states claim that they can secede from the federation. This is contrary to all federal concepts and no united nation will become a possibility without a political revolution.

The paramount power by constituting this federation does not part with its paramountcy. Sec. 286 lays down that if His Majesty's representative for the exercise of the functions of the Crown in its relations with the Indian states, requests the assistance of armed forces for the due discharge of those functions, it shall be the duty of the governor-general in exercise of the executive authority of the federation, to cause the necessary forces to be employed accordingly. And it is also lawful for His Majesty to appoint the same person to fill both the offices.

Therefore the instrument of accession cannot be called a treaty or a contract and is only in the nature of "a guide to political practice" which can be altered at any time by the paramount power.

Another claim of the states was that they should be the sole authority to put into execution the federal laws in their territory since it would be derogatory to their sovereignty; if fede-

ral authorities from outside the state were allowed to enter the state to administer the federal laws. But in such a case the ruler, as far as the federal subjects are concerned, will only be an agent of the federation in his own state. Hence there will be a further limitation of sovereignty.

Since the executive action of the federation is taken in the name of the government of India, the governor-general in council will acquire extended powers. In the case of a federated state which becomes financially bankrupt, the Act does not make it clear how the work of the federation should be carried on, unless the ruler gives his consent to an altered instrument of accession.

Moreover, all the defects and difficulties in diarchy will also make themselves felt in the centre as it did in the past and then the governor-general must take refuge in his extraordinary powers and thus make further encroachment upon the sovereignty of the states.

Sec. 45 (sub-sec. 4) provides that, if the federal government has been carried on for three years under the present proclamation, and the government of the federation shall be carried on in accordance with the other provisions of this Act, subject to any amendment which Parliament may deem necessary, but nothing in this subsection shall be construed as extending the power of Parliament to make amendments in this Act without affecting the accession of a state. This means that in the event of a breakdown, the Parliament can cancel the present Act and introduce a new Act, provided that the states give a fresh assent on reconsidering their position. This means the princes will be free to leave the federation.

The governor-general can take over all or any of the powers, except those of the federal courts as under the diarchic system. Therefore this protection to the princes was given when clause V of Sec. VI would have provided ample safeguards, merely to allay the fear of the princes, who imagined that the British Indian representative would prove hostile to them, and thus destroy the federation. But the same thing might happen if the rulers or the condition of the state make it obligatory on the part of the paramount power to set aside the state sovereignty and also assume that attitude, due to the opposition in British India. If the constitution breaks down, the rulers cannot continue to be in a federation where the governor-general has assumed all the powers.

B. Representation in the Legislature

The federal legislature will be composed of the King represented by the governor-general, the federal council and the federal assembly (House of Assembly).

In the Council of State, there are 156 members from British India and about 104 for the states, the number dependent upon the number of states acceding to the federation. Whereas in British India, members are directly elected, except six who are nominated from the scheduled classes, the seats for the Indian states have been allocated on the basis of dynastic salute, population and similar reasons.

Hyderabad has five seats; Mysore, Kashmir, Gwalior and Baroda three each; Kalat two; Sik-

kim one; Travancore, Cochin, Udaipur, Jaipur, Jodhpur, Bikaner, Indore, Bhopal, Rewa, Kolhapur, Patiala, Bhawalpur, two each and the rest are alloted to minor states grouped under various divisions, the total population of the states being 78,981,912[1] The states representatives are appointed for definite period by the rulers who can insist upon the resignation of the members in order to nominate one of their own way of thinking. No restriction is placed upon the manner of nominating a state's representative. The Act deliberately omits even the most remote mention of the states' people.

In the Assembly, there will be 250 British Indian members and the state representatives upto a maximum of 125. To the Assembly, there will be indirect election from the provinces and nomination from the states. Much heart-burning among the princes has been caused by fixing the number of representatives according to population or salutes.

Hyderabad with about 14½ million population has 16 seats, Mysore with 6½ million has 7 seats, Travancore with about 5 million has 5 seats, while Kashmir and Gwalior with about 3½ million population are given four seats each. Roughly upon the population basis, the idea seems to be to give one member for one million people and that member also will be nominated by the ruler.

1. See Appendix H.

C. Powers of the Federal Legislatures

As far as the state is concerned, the federal authority can legislate only on those subjects specified in the instruments of accession and in the federal legislative list containing 59 items.[1] Therefore, the federal legislature will have wider powers in the case of British India and it is objected that since the British Indian representatives can have no voice in the matters affecting the states or the ruler, the representatives of the ruler are free to comment and vote upon purely British Indian matters. But it is hoped that a gentleman's understanding would take place by which the states' representatives will abstain from voting on a purely provincial question, when the fate of a minority depends upon the vote of the state representative.

In case of conflict between the federal authority and the provincial government, normally the federal acts should prevail and the provincial laws will be void as far as the subjects in the federal list are concerned. The residual power of legislation as far as the British Indian provinces are concerned would be with the governor-general but the states claim that they have the residuary authority since they are the donors to the federation. Dr. J. H. Morgan points out that in the case of concurrent powers of taxation, no court can do anything to restrain such exhaustive competition between the centre and the constituent units in a federation in tapping sources of revenue. Though the Government of

1. See Appendixes B and H.

India Act carefully divides the field of taxation between the central and the local legislatures and thus restricts the taxing power of the central legislature, there is no restriction upon its power of appropriation. This unrestricted power of appropriation will eventually prove, as in the United States, Australia and Canada, to be a powerful instrument in the hands of the federal government to undermine the autonomy of the units. Hence these irregularities regarding the powers of legislature makes the act very unworkable.

D. Federal Executive and the States

Since the Government of India Act gives complete control to the central government over the constituent units by division of subjects, radical change from the previous unitary constitution is provided for. To exercise such authority the governor-general is empowered to administer the laws in such a way as to secure the greatest amount of co-operation from the provinces and the states. Under Sec. 124 and 125 the governor-general can entrust the provincial governor or the ruler with authority to act as his agent. The governor-general is empowered by personal inspection or in any other way to satisfy himself that the policy of the federal government is being carried out and that the province or the state shall not act in a way detrimental to the federation.

Under Sec. 128 the executive authority of the state must be so exercised as not to infringe federal authority and in case of doubt, the gover-

nor-general can at his discretion, issue directions to the ruler, and in such a case, rulers cannot evoke the authority of the Crown's representative and will be dealt with directly by the governor-general.

If a province or a state refuses to carry out the orders of the governor-general, the provincial governor because of his special responsibilities must put into effect such orders acting if necessary, against the advice of his ministers. In the case of states also similar instructions can be given to the ruler and the decision of the federal court will be binding upon the ruler.

The federal government has absolute control over the broadcasting right over the provinces and the states. The governor-general in the exercise of his powers for the prevention of any grave menace to the peace and tranquility of India may place such limation as he may think fit upon broadcasting and therefore the publicity campaigns would be under the control of the executive authority.

As regards water rights, under this Act when there arises dispute between two rulers, the complaint is to the governor-general, who may appoint a special commission to investigate and may make such orders as he may deem proper. There is the right of appeal from the province or the rulers of a state who must request the governor-general to refer the matter to His Majesty in Council.

As the state or provincial laws are declared to be void when they are repugnant to the order of His Majesty in Council or that of the governor-

general's decision on cases in which he has been thus empowered, they cannot be set aside by the federal judicature.

E. Federal Judiciary and the States

The federal court is described as the "interpreter and the guardian of the constitution" and a tribunal for the determination of the disputes between the constituent units of the federation. The court will usually consist of one chief justice and six puisne judges. The judges can be removed only by His Majesty on the grounds of misbehaviour and infirmity, if the judicial committee of the Privy Council makes such a recommendation.

On the appellate side, it can hear cases from the high courts in the federated states, on a "substantial question of law" i.e., a question of great public or private importance; in case of the federated states, under Sec. 207 of the Act, an appeal will lie to the federal court from a high court in a federated state, by way of a special case, on the ground that the question of law has been wrongly decided. The question must refer to the interpretation of the Act or of an Order-in-Council made thereunder or the extent of legislative or executive authority, vested in the federation by virtue of the instrument of accession of that state or under an agreement made under Part VI of the Act dealing with administrative relations.

It is pointed out that the federal court can hear appeals in all those matters from a high court but in any case which concerns matters coming up before the federal legislature, there is no such right of appeal from the state court. This

provision is meant to preserve the so-called sovereignty of the rulers.

On the original side, the federal court judgments are merely declaratory, and the execution of them is left to the high courts. Under sec. 210 all authorities civil and judicial throughout the federation, must act in aid of the federal court; under sec. 212 the decision of the federal court is binding on any federated state so far as the application and interpretation of this Act or any Order-in-Council is concerned.

To save the prestige of the princes, the federal court does not immediately issue instructions to the high court in the state, but should communicate its decisions in the forms of letters of requests to the ruler. From the federal court appeals lie to the Privy Council, under Sec. 208, with or without leave of the federal court. Appeal without leave must be only with regard to the cases mentioned above.

The judicial committee of the Privy Council will not usually review criminal proceedings because it is not a court of criminal appeal. It takes cognisance of criminal cases only when there is a flagrant breach of law, shocking the very basis of justice and the J.P.C. Report points out that the jurisdiction of the Privy Council in relation to the states will be based upon the voluntary acts of the rulers themselves viz., the instruments of accession.

There is another danger to the liberties of the people. Section 213 permits the governor-general to refer any question of law, which has arisen or likely to arise to the federal court and the

court may after such hearing as it thinks fit, report to the governor-general thereon. This is contrary to international judicial practice. The supreme court of the United States of America refused to advise the president beforehand about the contemplated constitutional changes. The executive must take action on its own initiative, abide by the decisions of the federal court and take the consequences. Yet, for the first time in the history of India, the federal court has given a legal unity to the whole country. Even as regards the Indian states the Rajkot imbroglio has created a new precedent for arbitration of cases where there is an alleged breach of an agreed pact.

The states people are not protected even in irregular and outrageous cases. For, no appeal is possible from the states courts, either to the Privy Council or to the federal court. Thus the notion of the ruler's sovereignty has been affirmed at the expense of justice and humanity.

CHAPTER X

THE FUTURE

THE Government of India Act was conceived in an atmosphere of suspicion and distrust, repression and reaction. It is acknowledgedly imperfect and has not obtained the sanction of any section of the Indian peoples or the princes or even of the conservative elements in England. From the British Indian point of view, it has been attacked because it makes the representatives of the states privileged members of the legislatures with semi-contractual rights, with power to delay the future constitutional development.

The units which compose the federation are unequal in status and power and the motive of the British government in introducing such an anomalous constitution is obviously to strengthen the reactionary and conservative elements in order to postpone the grant of responsible government.

It is conceivable that a situation might arise in British India, when even constitutional agitation may be interpreted by the British government as rebellion. If the British forces prove inadequate to meet the situation, the paramount power can call upon the states to place their armies at the disposal of the British and to work in cooperation with their troops. The states are bound by numerous treaties which specify that the states' troops, whenever requisitioned by the government of India, would be placed at their

disposal.[1] In such a case Indian troops of the states may be employed against their own countrymen and the princes in spite of their protestation to be thoroughly Indian, will have to acquiesce in such a policy.

The exclusion of defence and external affairs from the federal dominion and the special responsibilities and safeguards result in the virtual disappearance of responsibility in the centre, strengthening the hands of the governor-general.

The deliberate non-mention of Dominion status is another just grievance. India by various pronouncements had been promised Dominion status in action. The issues of neutrality and secession are still left unsolved[2] in regard to the Dominions, and Canada, Eire and South Africa have made rapid strides in establishing conventions which virtually give the Dominions sovereignty in practice. The Statute of Westminster 1931 abolished the interference of the imperial paramount power in internal affairs.

India because of her sacrifices in the Great War was ranked as a Dominion only so far as honours and ceremony were concerned. The Statutory Commission, the Joint Select Com-

1. Article 8 of the treaty of 1818 lays down
"The Maharaja of Bikaner will furnish troops on the requisition of the British Government, according to his means."
The Treaty of 1818, with the Maharaja of Patiala, Article 6 says:
"The Raja hereby binds himself to employ his troops at his own expenses whenever required to do so in co-operation with those of the British Government, on all occasions in which the interests of the two states may be mutually concerned."

2. Keith. *The Sovereignty of the British Dominions*, p. 15.

mittee and the preamble to the Government of India Act have maintained a remarkable silence about the Dominion status of India. In 1929 Lord Irwin explained that Dominion status was not possible because of the differences in India of race, caste, and religion and because India was not able to bear the burden of its own defence. The Statute of Westminster did define Dominion status and the preamble says that it is enacted to ratify, confirm and establish that declaration.[1] Lord Crewe tried to throw oil over troubled waters by making a distinction between Dominion status and Dominion functions. But this subtle distinction cannot withstand a moment's scrutiny.

The Indian Legislative Assembly while condemning the scheme of provincial government in the Act, totally condemned the proposed federation as bad in principle and un-acceptable in practice. When once a beginning had been made by giving India a place in the League of Nations and India, being represented in international and Imperial Conferences, being one of the signatories to the Peace Treaty, sending its representatives to the War Conferences and to the Naval Conferences, appointing a high commissioner in London and having a fiscal autonomy convention on the analogy of the Dominions, it is now too late in the day to deny the possibility of the Dominion status with full responsible government "even as a distant goal".

The Indian National Congress in its Haripura session has condemned the federation in unmis-

1. Keith, *A Constitutional History of India*, p. 464.

takable terms and even the minority interests represented by the Muslim League and similar bodies have expressed their dissatisfaction.

The Liberal party has similarly expressed its disapproval but shows a tendency to work the scheme on its merits, admitting the necessity for safeguards, in the words of Sir Tej Bahadur Sapru "as much due to our want of faith in ourselves as to the British want of faith in our capacity to govern ourselves".

From the point of view of the present work the proposed federation has been condemned by the Indian States' Peoples' Conference, who urge:—

(1) That paramountcy should not be divided, and that it should ultimately vest in the central federal government;

(2) That paramountcy may, if thought necessary, be included in the reserved subjects during the transition period;

(3) That during this transition period, the princes should so adjust their governments as to establish responsible governments in the states and undertake to bring about progressive realisation of the same;

(4) That the states should be admitted into the federation only on the condition that the standard of government in them is of the same type as prevailing in those of British Indian units;

(5) That this condition alone will approximate states to the British Indian provinces and would accelerate the growth of united India; that this condition alone

would enlarge the number of federal subjects and consequently diminish the number of provincial subjects, and this process alone will conduce to the full development of the real all-India federation;

(6) That the states should be represented in the federation only through the elected representatives of the people and the nominees of the princes should on no account be permitted to sit in any house of the federal legislatures;

(7) That federal laws relating to federal subjects must directly be operative in the states and that administration of federal subjects must be entrusted to the federal executive and that any violation of federal laws or any vagaries in the administration of federal subjects committed within the limits of Indian states must be cognisable by the federal supreme court.

(8) That until responsible government is established in the states, and until an independent judiciary comes into existence and until the rule of law prevails in the states, the judiciary in the states must be linked to the federal supreme court;

(9) That the declaration of fundamental rights of the people must be embodied in the federal constitution and these rights must be guaranteed to the states people and the infringement of the same must be cognisable by the federal supreme court;

and

(10) That the people of the states must be enabled to send their representatives to participate in the future conference convened for shaping the Indian constitution.

The rulers have tried to discredit the representative nature of this Conference and have used all the power at their command to suppress the movements for constitutional reforms.[1]

The British government's policy is to perpetuate the states but not guarantee popular governments in the states. With this object, the putrifying corpse of "sovereignty" has been disinterred, though there is not even the least historical excuse for doing so. Recent developments have however slightly changed the attitude of the paramount power.

The objection raised by some rulers that they are not free to introduce responsible government in the states, cannot be maintained either from the terms of the treaties or from official pronouncements. of the Viceroys and the secretaries of state.

The treaty with Patiala (1860), Kashmir and Jammu (1846), Bikaner (1830), Alwar (1803), Jamnagar (1808) bind the rulers "to omit no exertion to do justice and promote the welfare and happiness of the people."

Among the Viceroys, Lytton and Curzon emphasised that the British government undertook

1. Keith. *A Constitutional History of India*, p. 451:
"The States Peoples Conference represents the doctrine of the common interests of the people of states as against their rulers, and it is in vain that the Maharaja of Bikaner contends that the Conference is in principle unconstitutional and illegal."

to protect native states for the specific purpose of securing the people from mis-government and that the ruler has his real work, his princely duty among his own people. By this test alone will he in the long run as a political institution perish or survive.

Quite recently, Earl Winterton made the position of the paramount power clear, by saying in Parliament, that, as regards full powered states, the paramount power will place no obstacle to the introduction of responsible government and that no previous sanction is necessary.

The juristic view of sovereignty according to Sir Henry Maine, emphasises the element of coercion and force in the state to the exclusion of other influences like public opinion, longstanding custom or ethical notions.[1]

Some modern theories claim that the juristic conception of sovereignty was the one accepted by the Hindu legists and the "the royal ordinances which emanated from the will of the king were a source of law superior to **Dharma, vyavahara,** and **charitra.**"[2]

The sanction of positive law proceeded from the king as in the theories of modern English jurisprudence. It is also contended that the king was absolute and even the right of rebellion was discouraged, if not denied.

But this is a travesty of facts.

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1. Henry Maine, *Early History of the Institutions.*
2. N. D. Varadachari, *Indian States in the Federation,* p. 41: "*Rajagnya* or *Rajashasana* which emanated from *Raja Buddhi* or the will of the king was a source of law in its efficacy in the state."

The coronation oath says "May my life and offspring be cut off if I work against your interest."[1]

It was impressed on the king that loyalty was conditional on good rule, according to Satya and Dharma.[2] According to Greek authorities also when there was a failure of heirs or when a king had been deposed in India, a new king was elected.[3]

The Dharma-sastras provide that a special ceremony known as Sautramani should be performed on the restoration of a deposed king. "No consideration would justify our reading anything like a divine right theory into the vedic texts"; even in the post vedic age, kingship was a civil monarchy, not a sacerdotal or military authority.

In the Mauryan polity, all the elements of sovereignty like the monarch, the ministry, fort, finance, population and army and allies were equally important, and the king was only regarded as the agent of the people. According to Sukra Niti, the king's business was merely to enforce obedience to Dharma and to rule according to equity.

In the medieval period, due to military necessity the Rajput, Afghan, Mogul, and Vijayana-

1. A.B. X Vol. 1 XV:
"Ayuh Prajam Vrinjithah Yadi te druhyeyam;
evam kshatriyam sapayitva abhishincheta".
2. S. V. Venkateswara, *Indian Culture through the Ages*, Vol. II, Ch. Vedic foundations "Soma is the deathless king of us, dwellers in eternity, and for the time being we swear allegiance to this human king likewise.
See. Venkateswara Ch. Our Heritage.
3. McCrindle, *Megasthenes* and *Arrian*, page 200.

gar polities laid emphasis on the powers of the monarch but even the Muhammadan kings had to obey the Muhammadan law of the Koran and also customs and usages of the country.

Benevolent despotism therefore has been tempered throughout our history, by considerations of Dharma and loyalty to Dharma was of greater importance than loyalty to the person of the king. To say that widely different social systems in the world have all evolved the theory of absolute sovereignty "as a necessity of historical evolution, first as a social necessity which became later political" is as mischievous as it is misleading.

In ancient imperialisms, the independence of local and provincial units was well recognised and respected and hence the paramount power could not claim absolute jurisdiction as in the modern totalitarian governments or British imperialism. There is absolutely no evidence of the central government at any time being based on the will of one man. Says Prof. Venkateswara:

> "The ancient raja was rather an impartial arbiter than the master of the state. He was selected by the ministers and by the people who were the real king-makers".

To claim sovereignty for the princes on the ground that it is divisible and capable of limitation is unhistorical and lands the protagonists of the theory in inconsistencies. It is said that one sovereignty cannot create another. But at the same time the states claim that they have created the part-sovereignty of the Crown. "We have

already seen how the paramount power by act of Parliament may make even a British Province Sovereign."[1]

It was elicited by Sir Stafford Cripps that all that was necessary for a British court to recognise the sovereignty of the Indian state was merely to obtain a certificate from the secretary of state or the political department, as in the case of Franco's government in Spain. Certain verbal amendments to the Government of India Act have been made in 1939 to remove the legal difficulties in the way of the governor-general to compel the provincial governments to co-operate in times of war. These emergency powers further invade the sphere of local autonomy.

The paramount power can create states like Mysore, Kashmir and Satara which are "sovereign"; it can abolish states, like Tanjore; and can increase or decrease the extent of states, like Hyderabad and Baud.

Therefore the sovereignty of the states is nothing but fictitious; but the fiction is prevented from dying out altogether, because the British can use it to bolster up rulers who are admittedly reactionary and thus frustrate the unification and democratisation of all India.

As regards the financial obligation, the states claim that they are altogether put to a loss of rupees 1,044 lakhs and this is put forward as an excuse for the economic backwardness of their territories. Since authentic statistics are lacking, it is not possible to support this claim. Further,

1. Sir T. B. Sapru, before the federal structure sub-committee.

the extravagance of the princes and the non-existence of a civil list, or even of public auditing of accounts, in many states, seem to be the real causes for such economic backwardness.

The states claim that the present distribution of the proceeds from the match duty should continue and also the corporation tax, the contribution in lieu of the surcharge on the income-tax, exemption from emergency surcharge on the income-tax and exemption of the trade profits before they can accede to the federation. But this is an enormous demand.[1]

If, at the price of the ruler joining the federation, the paramount power remits rupees 1,044 lakhs claimed by the princes, there is no guarantee, that the money would be used for the welfare of the states people. Therefore, in the interests of the people, it is incumbent upon the paramount power, to enforce general rules as to how the money should be spent on nation-building projects.

1. The Bhopal Committee which met the Viceroy in Simla and Delhi has been told that no fundamental modifications will be made in the instrument of accession. But it is now sought to be proved that sovereignty is independent of treaty-rights and that the two should not be confused. Though the treaties may be affected by the federal plan, sovereignty seems to be guaranteed. In the light of political theory we have clearly proved that no sovereignty exists. The princes and the paramount power now want to shift their ground because treaties do not support their claim to sovereignty. The paramount power, to impose federation at any cost have made this distinction which is detrimental to the cause of the states' people. Dr. Morgan has veered round and now says that the modifications in the instrument of accession in no way affects the sovereignty of the princes and has advised them to join the federation.

If the demand for provinces on a linguistic basis materialises, it is within the bounds of possibility that the present territorial boundaries of the states might be radically altered.

A reactionary spirit has evinced itself in some quarters in the proposal to form a Pakistan as opposed to Hindustan; a Muslim federation confronting a Hindu federation; a British Indian federation pitted against an Indian states federation; Muslim League states versus Congress states; the smaller states versus the major states; the Northern Indian states versus the South Indian states. This mischievous idea, taking its rise in the minds of communalists and die-hards, proposes to hack and hew a living, pulsating organism that is India.

In the present transitional stage of India, a responsive and responsible leadership is necessary to bring about national unity. The proposed federation is admittedly not in the interests of the unity of the country and being rigid, helps only the reactionary elements. The hope expressed that the working of the federal constitution in spite of its obvious defects, as in the case of the provincial autonomy, would bring real benefits, is based on a false analogy. Provincial autonomy has resulted in a few social and economic measures, but the constructive efforts of the provincial Congress governments have had the effect of throwing into sharp relief the glaring defects of the whole constitution. The progress achieved in the British Indian provinces has resulted, except possibly in the case of Aundh and Cochin, in the increased dictatorship of the political department over the princes and in

stiffening the attitude of the major states towards the demand for responsible government by the peoples of the states, as revealed in the recent deliberations of the Chamber of Princes.

The rulers and their representatives have frequently assailed democracy on the ground that "Parliamentary Democracy is decaying everywhere"[1] and "if British India is hoping to compel us to wear on our healthy body politic the Nessus shirt of a discredited political theory, they are living in a world of unreality."[2]

If we analyse the recent manifestations of the divergent political ideologies in the world, fascism and communism however much opposed to each other and also to democracy, are but two sides of the same coin bringing into circulation the common principle of dictatorship. They spring from a common source—a resentment against the enormous wastage of human and natural resources. Dictatorship can be considered as one form of trusteeship. No doubt personal, racial and national considerations play an important part but whereas on the one side there is a resentment against those who claim power for the masses without proper scientific training and personal discipline, on the communist side there is the justifiable resentment against those who possess the means and opportunities but use them for selfish ends. The danger to democracies can be averted only if this just resentment is canalised into constructive activity and this can be achieved only in a parliamentary state,

1. Sir Mirza Ismail, Speech, January 1934 in the Mysore Representative Assembly.
2. Maharaja of Patiala, Chamber of Princes, 22nd June 1935.

federal in character, where the highest development of the individual will be possible.

In such an atmosphere, though the rulers will gain financially and politically, no conceivable advantage accrues to the states' people by joining the present federation. Indian unity and Indian nationalism can be enhanced only by a federal union, not of the princes, but of the states' people. The states' people can benefit and be benefitted only according to the ability with which their accredited representatives can lead the federal cabinets and the legislatures. The best way of hastening an ideal federation in India will be by strengthening the Indian States' People's Conference and not by such methods as the reorganisation of the Chamber of Princes. The recent attempts made by the Chamber to overhaul its organisation are directed to form a united front against the states' people.

It has been proposed that in addition to the present Chamber, a council and a standing committee of the princes advised by a permanent council of ministers should be formed. But the major states are reluctant to join the Chamber at all and some of the bigger states which now dominate the Chamber will never consent to deprive themselves of the power of voting and nomination. The future of the Princes Chamber is of no interest to the states' people except to be on their safeguard.

The extent to which the Indian states' rulers are prepared to go, is shown in the advice given to Sir Mirza Ismail by Dr. Victor Bruns and Dr. Bilflinger to the effect that, since the states are

distinct from British India, they are still international persons, in spite of the fact that their external affairs are entirely controlled by the paramount power. This clearly ignores the established principle of international law that "a state is and becomes an international person through recognition only and exclusively".

The policy of 'sewing up the mouth with a mouthful' will only postpone the evil day and not avert it. There is reason to believe that the revised instrument of accession circulated among the princes will give more fiinancial concessions to the states and thus result in the formation of a united front of the anti-progressive, anti-social elements in the country, to the ultimate benefit of British imperialism.* In view of the rapidly changing conditions in the country, the question whether the agitation for reforms in the states should come after or before the fight for responsible government in British India, loses much of its importance, for it is a basic fact that the states' people have shown the same passion for unity and solidarity with the whole nation as the people of British India. The events are moving so fast that the question of mending or ending the

*As regards giving effect to the decrees of the federal court, a special machinery is being created so that the "internal sovereignty" of the states is not affected. Concessions are given regarding sugar, railway lands, and customs. Details are lacking.

The small states want a special body of police under the control of the residents and stationed in Central Provinces and other places to prevent British Indian agitators entering the states. Princes claim that the cost of this special police should be borne by the federal authorities and at the same time want the police to be controlled by themselves, because their prestige will be affected. This is a constitutionally impossible position.

present regime should be tackled at once. The dreams and schemes of prophets and professors have the quality of disappointing those who conceive them, as history has shown again and again. As practical politicians, knowing human nature as it is, it is reasonable to predict that when the fight against the federation that is sure to be imposed, unless wiser counsels prevail, begins, the states' people will inevitably be drawn into it. Some of the ex-dewans like Sir M. Visvesvaraya and Sir Albion Rajkumar Banerji, have expressed the views recently, that during their regimes in Mysore and Cochin they were prepared to introduce fundamental reforms in those comparatively progressive states, but the circumstances were not propitious.

The Haripura and Tripuri Congress resolutions have brought about a profound change in the attitude of the Congress towards the states' people's fight. A new blood has been infused by Mahatma Gandhi and Sardar Vallabhbhai Patel who have taken up the cause of the Rajkot people and by Pandit Jawaharlal Nehru, the present president of the Indian States' People's Conference. Under the guidance of such veteran leaders the states' people's problem has become a live issue and it augurs well for the future that the Congress is prepared to fight for the freedom of all India, including the Indian states.

Even the elementary rights of citizenship are denied in the majority of the states. Not only from the view point of the political unity of the whole country, but also from the economic and social points of view, unity and uniformity of administration are necessary. Ever since its in-

ception, the Congress has made it quite clear that it has nothing but the friendliest feelings towards the rulers and has time and again urged them to grant at least the elementary rights to the people. If this advice had fallen on responsive ears, the present crisis would have been modified, if not averted. But the princes in spite of the recent pronouncements of Earl Winterton, Lord Zetland and Lord Linlithgow, have merely been marking time. Unless radical changes are introduced immediately, constructive statesmanship will become an impossibility and the forces of revolution, to break and not make the states, will be let loose. Ordered and disciplined progress will become impossible—a calamity no true Indian patriot is prepared to view with equanimity.

The contemplated federation of India though outwardly it conforms to the usual test of a federation, has not the essential spirit and is incapable of adaptation. The best type of government that conforms to our national tradition and heritage and suits the genius of our people will be a parliamentary state, federal in character and distributive in technique, thus renouncing the absolute notion of legal sovereignty. Thus alone can India take its place in the comity of nations as a collective personality, harmonising the extremes of plurality and unity.

APPENDIX A.

DRAFT INSTRUMENT OF ACCESSION (REVISED)

(A provisional draft instrument of accession was originally published as a Command Paper (Cmd. 4843). It has since been revised in the light of the Government of India Act of 1935 and of the criticisms directed against it. The revised form reproduced below has been circulated among the Indian states individually with a view to an early discussion with the rulers.)

THE INSTRUMENT OF ACCESSION OF..... (full name and title)

Whereas the proposals for the establishment of a Federation of India composing such Indian States as may accede thereto and the provinces of British India constituted as autonomous provinces have been discussed between the representatives of His Majesty's Government, of the Parliament of the United Kingdom, of British India and of the Rulers of the Indian States.

And whereas those proposals contemplated that the Federation of India should be constituted by an Act of the Parliament of the United Kingdom and by the accession of Indian States.

And whereas provision for the constitution of the Federation of India has now been made in the Government of India Act of 1935, but it is by that Act provided that the Federation shall not be established until such date as His Majesty may, by proclamation, declare and such declaration cannot be made until the requisite number of Indian States have acceded to the Federation.

And whereas the said Act cannot apply to any of my territories save by virtue of my consent and concurrence signified by my accession to the Federation.

Now therefore I, (full name and title, ruler of....), in the exercise of my sovereignty in and over my said State, for the purpose of co-operating in the

furtherance of the interests and welfare of India by uniting in a federation under the Crown by the name of Federation of India with the provinces called Governor's Commissioners' Provinces and with the Rulers of other Indian States, do hereby execute this my Instrument of Accession and

(1) I hereby declare that, subject to His Majesty's acceptance of this Instrument, I accede to the Federation of India as established under the Government of India Act of 1935 (hereinafter referred to as "the Act") with the intent that His Majesty the King, the Governor-General of India, the Federal Legislature, the Federal Court and any other Federal authority established for the purposes of the Federation shall, by virtue of this, my Instrument of Accession, but subject always to the terms thereof and for the purposes only of the Federation, exercise in relation to the State of... (hereinafter referred to as "this State") such functions as may be vested in them by or under the Act.

(2) I hereby assume the obligation of ensuring that due effect is given to the provisions of the Act within this State so far as they are applicable therein by virtue of this my Instrument of Accession.

(3) I accept the matters specified in the first schedule hereto as the matters with respect to which the Federal Legislature may make laws for this State and, in this Instrument and in the said first schedule, I specify the limitations to which the power of the Federal Legislature to make laws for this State and the exercise of the executive authority of the Federation in this State are respectively to be subject. Where under the first schedule hereto the power of the Federal Legislature to make laws for this State with respect to any matter specified in that schedule is subject to a limitation, the executive authority of the Federation shall not be exercisable in this State with respect to that matter otherwise than in accordance with and subject to that limitation.

(4) The particulars to enable due effect to be given to the provisions of sections 147 and 140 of the Act are set forth in the second schedule hereto.

(5) Reference in this Instrument to laws of the Federal Legislature include reference to Ordinances promulgated, Acts enacted and laws made by the Governor-General of India under sections 42 to 45 of the Act inclusive.

(6) Nothing in this Instrument affects the continuance of my sovereignty in and over this State, or save as provided by this Instrument, or by any law of the Federal Legislature made in accordance with the terms thereof, the exercise of any of my powers, authority and rights in and over this State.

(7) Nothing in this Instrument shall be construed as authorizing Parliament to legislate for, or exercise jurisdiction over this State or its ruler in any respect. Provided that the accession of this State to the Federation shall not be affected by any amendment of the provisions of the Act mentioned in the second schedule thereto and the references in this Instrument to the Act shall be construed as references to the Act as amended by any such amendment; but no such amendment shall, unless it is accepted by the Ruler of this State in an Instrument supplementary to this Instrument, extend the functions which by virtue of this Instrument are exercisable by His Majesty or any Federal authority in relation to this State.

(8) The schedules hereto annexed shall form an integral part of this Instrument.

(9) This Instrument shall be binding on me as from the date on which His Majesty signifies his acceptance thereof, provided that if the Federation of India is not established before the day of ..... Ninteen hundred and....., this Instrument shall, on that day, become null and void for all purposes whatsoever.

(10) I hereby declare that I execute this Instrument for myself, my heirs and successors, that accordingly any reference in this Instrument to me, or to the Ruler of this State, is to be construed as including a reference to my heirs and successors. This Instrument of Accession (then follows the attestation to be

drawn with all due formally appropriate to the declaration of a Ruler).

Additional Paragraphs.

(The following are additional paragraphs for insertion in proper cases.)

(a) Whereas I am desirous that functions in relation to the administration in this State of laws of the Federal Legislature which apply therein shall be exercised by the Ruler of this State and his officers and the terms of an agreement in that behalf have been mutually agreed between me and the Governor-General of India and are set out in the schedule hereto, now therefore I hereby declare that I accede to the Federation with the assurance that the said agreement will be executed and the said agreement, when executed, shall be deemed to form part of this Instrument and shall be construed and have effect accordingly.

(b) The provisions contained in part VI of the Act with respect to interference with water supplies, being sections 130 to 133 thereof, inclusive, are not to apply in relation to this state.

(c) Whereas notice has been given to me of His Majesty's intention to declare in signifying his acceptance of this my Instrument of Accession that the following areas are areas to which it is expedient that the provisions of sub-section (1) of section 294 of the Act should apply; now therefore I hereby declare that this Instrument is conditional upon His Majesty making such a declaration.

APPENDIX B.

PROVISIONS OF THIS ACT WHICH MAY BE AMENDED WITHOUT AFFECTING THE ACCESSION OF A STATE

Part I.

In so far as it relates to the Commander-in-Chief.

Part II, Chapter II.

save with respect to the exercise by the Governor-General on behalf of His Majesty of the executive authority of the Federation, and the definition of the functions of the Governor-General; the executive authority of the Federation; the functions of the council of minsters, and the choosing and summoning of ministers and their tenure of office; the power of the Governor-General to decide whether he is entitled to act in his discretion or exercise his individual judgment; the functions of the Governor-General relating to the peace or tranquillity of India or any part thereof, the financial stability and credit of the Federal Government, the rights of Indian States and the rights and dignity of their Rulers, and the discharge of his functions by or under the Act in his discretion or in the exercise of his individual judgment; His Majesty's Instrument of Instructions to the Governor-General; the superintendence of the Secretary of State; and the making of rules by the Governor-General in his discretion for the transaction of, and the securing of transmission to him of information with respect to, the business of the Federal Government.

Part II, Chapter III.

save with respect to the number of the representatives of British India and of the Indian States in the Council of State and the Federal Assembly and the manner in which the representatives of the Indian States are to be chosen; the disqualifications for membership of a Chamber of the Federal Legislature in relation to the representatives of the States; the procedure for the introduction and passing of Bills; joint sittings of the two Chambers; the assent to Bills, or

the withholding of assent from Bills, by the Governor-General; the reservation of Bills for the signification of His Majesty's pleasure; the annual financial statement; the charging on the revenues of the Federation of the salaries, allowances and pensions payable to or in respect of judges of the Federal Court, of expenditure for the purpose of the discharge by the Governor-General of his functions with respect to external affairs, defence, and the administration of any territory in the direction and control of which he is required to act in his discretion and of the sums payable to His Majesty in respect of the expenses incurred in discharging the functions of the Crown in its relations with Indian States; the procedure with respect to estimates and demands for grants; supplementary financial statements; the making of rules by the Governor-General for regulating the procedure of, and the conduct of business in, the Legislature in relation to matters where he acts in his discretion or exercises his individual judgment, and for prohibiting the discussion of, or the asking of questions on, any matter connected with or the personal conduct of the Ruler or ruling family of any Indian State; the making of rules by the Governor-General as to the procedure with respect to joint sittings of, and communications between, the two chambers and the protection of judges of the Federal Court and State High Courts from discussion in the Legislature of their conduct.

Part II, Chapter IV.

save with respect to the power of the Governor-General to promulgate ordinances in his discretion or in the exercise of his individual judgment, or to enact Governor-General's Acts.

Part III, Chapter I.

The whole chapter.

Part III, Chapter II.

save with respect to the special responsibilities of the Governor relating to the rights of Indian States and the rights and dignity of the Rulers thereof and to the execution of orders or directions of the Governor-General, and the Superintendence of the Governor-General in relation to these responsibilities.

Part III, Chapter III.

save with respect to making of rules by the Governor for prohibiting the discussion of, or the asking of questions on, any matter connected with or the personal conduct of the Ruler or ruling family of any Indian State, and the protection of judges of the Federal Court and State High Courts from discussion in the Legislature of their conduct.

Part III, Chapter IV.

The whole chapter.

Part III, Chapter V.

The whole chapter.

Part III, Chapter VI.

The whole chapter.

Part IV.

The whole part.

Part V, Chapter I.

save with respect to the power of the Federal Legislature to make laws for a State; the power of the Governor-General to empower either the Federal Legislature or Provincial Legislature to enact a law with respect to any matter not enumerated in any of the Lists in the Seventh Schedule to this Act; any power of a State to repeal a Federal law, and the effect of inconsistencies between a Federal law and a State law.

Part V, Chapter II.

save with respect to the previous sanction of the Governor-General to the introduction or moving of any Bill or amendment affecting matters as respects which the Governor-General is required to act in his discretion; the power of Parliament to legislate for British India or any part thereof, or the restrictions on the power of the Federal Legislature and of Provincial Legislatures to make laws on certain matters.

Part V, Chapter III.

The whole chapter.

Part VI.

save in so far as the provisions of that Part relate to Indian States, or empower the Governor-General to issue orders to the Governor of a Province for preventing any grave menace to the peace or tranquillity of India or any part thereof.

Part VII, Chapter I.

in so far as it relates to Burma.

Part VII, Chapter II.

save with respect to loans and guarantees to Federated States and the appointment, removal and conditions of service of the Auditor-General.

Part VII, Chapter III.

save in so far as it affects suits against the Federation by a Federated State.

Part VIII.

save with respect to the constitution and functions of the Federal Railway Authority; the conduct of business of the Authority and the Federal Government, and the Railway Tribunal and any matter with respect to which it has jurisdiction.

Part IX, Chapter I.

in so far as it relates to appeals to the Federal Court from High Courts in British India; the power of the Federal Legislature to confer further powers upon the Federal Court for the purpose of enabling it more effectively to exercise the powers conferred upon it by this Act.

Part IX, Chapter II.

The whole chapter.

Part X.

save with respect to the eligibility of Rulers and subjects of Federated States for civil Federal office.

Part XI.

The whole part

Part XII.

save with respect to the saving for rights and obligations of the Crown in its relations with Indian

States; the use of His Majesty's forces in connexion with the discharge of the functions of the Crown in its said relations; the limitation in relation to Federated States of His Majesty's power to adapt and modify existing Indian laws; His Majesty's powers and jurisdiction in Federated States, and resolutions of the Federal Legislature recommending amendments of this Act or Orders-in-Council made thereunder; and save also the provisions relating to the interpretation of this Act in so far as they apply to provisions of this Act which may not be amended without affecting the accession of a State.

Part XIII.

The whole part.

First Schedule.

The whole schedule, except Part II thereof.

Third Schedule.

The whole schedule.

Fourth Schedule.

save with respect to the oath or affirmation to be taken or made by the Ruler or subject of an Indian State.

Fifth Schedule.

The whole schedule.

Sixth Schedule.

The whole schedule.

Seventh Schedule.

any entry in the Legislative Lists in so far as the matters to which it relates have not been accepted by the State in question as matters with respect to which the Federal Legislature may make laws for that State.

Eighth Schedule.

The whole schedule.

Ninth Schedule.

The whole schedule.

Tenth Schedule.

The whole schedule.

APPENDIX C.

INSTRUMENT OF TRANSFER—1881.

Whereas the British Government has now been for a long period in possession of the territories of Mysore and has introduced into the said territories an improved system of administration: and whereas, on the death of the late Maharaja the said Government, being desirous that the said territories should be administered by an Indian dynasty under such restrictions and conditions as might be necessary for ensuring the maintenance of the system of administration so introduced, declared that if Maharaja Chamarajendra Wadiyar Bahadur, the adopted son of the late Maharaja, should, on attaining the age of eighteen years, be found qualified for the position of ruler of the said territories, the Government thereof should be intrusted to him, subject to such conditions and restrictions as might be thereafter determined: And whereas the said Maharaja Chamarajendra Wadiyar Bahadur has now attained the said age of eighteen years and appears to the British Government qualified for the position aforesaid, and is about to be intrusted with the Government of the said territories: and whereas it is expedient to grant to the said Maharaja Chamarajendra Wadiyar Bahadur a written Instrument defining the conditions subject to which he will be so intrusted: It is hereby declared as follows:—

1. The Maharaja Chamarajendra Wadiyar Bahadur shall, on the twenty-fifth day of March 1881, be placed in possession of the territories of Mysore, and installed in the administration thereof.

2. The said Maharaja Chamarajendra Wadiyar Bahadur and those who succeed him in manner hereinafter provided, shall be entitled to hold possession of, and administer, the said territories as long as he and they fulfil the conditions herein-after prescribed.

3. The succession to the administration of the said territories shall devolve upon the lineal descendants of the said Maharaja Chamarajendra Wadiyar

Bahadur, whether by blood or adoption, according to the rules and usages of his family, except in case of disqualification through manifest unfitness to rule:

Provided that no succession shall be valid until it has been recognised by the Governor-General in Council.

In the event of a failure of lineal descendants, by blood and adoption, of the said Maharaja Chamarajendra Wadiyar Bahadur, it shall be within the discretion of the Governor-General in Council to select as a successor any member of any collateral branch of the family whom he thinks fit.

4. The Maharaja Chamarajendra Wadiyar Bahadur and his successors (hereafter called the Maharaja of Mysore) shall at all times remain faithful in allegiance and subordination to Her Majesty the Queen of Great Britain and Ireland and Empress of India, Her Heirs, and Successors, and perform all the duties which in virtue of such allegiance and subordination may be demanded of them.

5. The British Government having undertaken to defend and protect the said territories against all external enemies, and to relieve the Maharaja of Mysore of the obligation to keep troops ready to serve with the British army when required, there shall in consideration of such undertaking be paid from the revenues of the said territories to the British Government an annual sum of Government Rupees thirty-five lakhs in two half-yearly instalments, commencing from the said twenty-fifth day of March 1881.

6. From the date of the Maharaja's taking possession of the territories of Mysore, the British sovereignty in the island of Seringapatam shall cease and determine, and the said island shall become part of the said territories, and be held by the Maharaja upon the same conditions as those subject to which he holds the rest of the said territories.

7. The Maharaja of Mysore shall not, without the previous sanction of the Governor-General in Council build any new fortresses or strongholds, or repair the

defences of any existing fortresses or strongholds in the said territories.

8. The Maharaja of Mysore shall not, without the permission of the Governor-General in Council, import or permit to be imported, into the said territories, arms, ammunition or military stores, and shall prohibit the manufacture of arms, ammunition and military stores throughout said territories, or at any specified place therein, whenever required by the Governor-General in Council to do so.

9. The Maharaja of Mysore shall not object to the maintenance or establishment of British cantonments in the said territories whenever and wherever the Governor-General in Council may consider such cantonments necessary. He shall grant free of all charges such land as may be required for such cantonments, and shall renounce all jurisdiction within the lands so granted. He shall carry out in the lands adjoining British cantonments in the said territories such sanitary measures as the Governor-General in Council may declare to be necessary. He shall give every facility for the provision of supplies and articles required for the trooops in such cantonments, and on goods imported or purchased for that purpose no duties or taxes of any kind shall be levied without the assent of the British Government.

10. The military force employed in the Mysore State for the maintenance of internal order and the Maharaja's personal dignity, and for any other purposes approved by the Governor-General in Council, shall not exceed the strength which the Governor-General in Council may, from time to time, fix. The directions of the Governor-General in Council in respect to the enlistment, organisation, equipment and drill of troops shall at all times be complied with.

11. The Maharaja of Mysore shall abstain from interference in the affairs of any other State or Power, and shall have no communication or correspondence with any other State or Power, or the Agents or Officers of any other State or Power, except with the previous sanction and through the medium of the Governor-General in Council.

12. The Maharaja of Mysore shall not employ in his service any person not a native of India without the previous sanction of the Governor-General in Council, and shall, on being so required by the Governor-General in Council, dismiss from his service any person so employed.

13. The coins of the Government of India shall be a legal tender in the said territories in the cases in which payment made in such coins would, under the law for the time being in force, be a legal tender in British India; and all laws and rules for the time being applicable to coins current in British India shall apply to coins current in the said territories. The separate coinage of the Mysore State, which has long been discontinued, shall not be revived.

14. The Maharaja of Mysore shall grant free of all charge such land as may be required for the construction and working of lines of telegraphy in the said territories wherever the Governor-General in Council may require such land, and shall do his utmost to facilitate the construction and working of such lines. All lines of telegraph in the said territories, whether constructed and maintained at the expense of the British Government, or out of the revenues of the said territories, shall from part of the British telegraph system and shall, save in cases to be specially excepted, by agreement between the British Government and the Maharaja of Mysore, be worked by the British Telegraph Department; and all laws and rules for the time being in force in British India in respect to telegraphs shall apply to such lines of telegraph when so worked.

15. If the British Government at any time desire to construct or work, by itself or otherwise, a railway in the said territories, the Maharaja of Mysore shall grant free of all charge such lands as may be required for that purpose, and shall transfer to the Governor-General in Council plenary jurisdiction within such land; and no duty or tax whatsoever shall be levied on through traffic carried by such railway which may not break bulk in the said territories.

16. The Maharaja of Mysore shall cause to be arrested and surrendered to the proper officers of the British Government any person within the said territories accused of having committed an offence in British India, for whose arrest and surrender a demand may be made by the British Resident in Mysore, or some other officer authorised by him in this behalf; and he shall afford every assistance for the trial of such persons by causing the attendance of witnesses required, and by such other means as may be necessary.

17. Plenary criminal jurisdiction over European British subjects in the said territories shall continue to be vested in the Governor-General in Council and the Maharaja of Mysore shall exercise only such jurisdiction in respect of European British subjects as may from time to time be delegated to him by the Governor-General in Council.

18. The Maharaja of Mysore shall comply, with the wishes of the Governor-General in Council in the matter of prohibiting or limiting the manufacture of salt and opium, and the cultivation of poppy, in Mysore; also in the matter of giving effect to all such regulations as may be considered proper in respect to the export and import of salt, opium and poppy-heads.

19. All laws in force and rules having the force of law in the said territories when the Maharaja Chamarajendra Wadiyar Bahadur is placed in possession thereof, as shown in the Schedule hereto annexed, shall be maintained and efficiently administered, and, except with the previous consent of the Governor-General in Council, the Maharaja of Mysore shall not repeal or modify such laws, or pass any laws or rules inconsistent therewith.

20. No material change in the system of administration, as established when the Maharaja Chamarajendra Wadiyar Bahadur is placed in possession of the territories, shall be made without the consent of the Governor-General in Council.

21. All title-deeds granted and all settlements of land-revenue made during the administration of the

said territories by the British Government, and in force on the said twenty-fifth day of March 1881, shall be maintained in accordance with the respective terms thereof, except in so far as they may be rescinded or modified either by a competent Court of law, or with the consent of the Governor-General in Council.

22. The Maharaja of Mysore shall at all times conform to such advice as the Governor-General in Council may offer him with a view to the management of his finances, the settlement and collection of his revenues, in imposition of taxes, the administration of justice, the extension of commerce, the encouragement of trade, agriculture and industry, and any other objects connected with the advancement of His Highness's interests, the happiness of his subjects, and his relations to the British Government.

23. In the event of the breach or non-observance by the Maharaja of Mysore of any of the foregoing conditions, the Governor-General in Council may resume possession of the said territories and assume the direct administration thereof, or make such other arrangements as he may think necessary to provide adequately for the good Government of the people of Mysore, or for the security of British rights and interests within the province.

24. This document shall supersede all other documents by which the position of the British Government with reference to the said territories has been formally recorded. And if any question arise as to whether any of the above conditions has been faithfully performed, or as to whether any person is entitled to succeed, or is fit to succeed, to the administration of the said territories, the decision thereon of the Governor-General in Council shall be final.

FORT WILLIAM,
1st March, 1881. (Signed) Ripon.

APPENDIX D.

THE MYSORE CASE

This case also illustrates the right of the Suzerain Power to depose a ruler in the event of gross mal-administration. It demonstrates the policy of keeping Indian States intact and avoiding annexation. The Instrument of Transfer, which is given in Appendix C lays down conditions on which the rendition was made and enumerates the rights and duties of the Paramount Power. But it is pointed out that the conditions laid down and the principles enunciated in the case of Mysore do not apply to those states which existed before the British assumed position of suzerainty in India: that they apply only to states which have been created or recreated by the British Government like Mysore.

After the death of Tipu and the fall of Seringapatam in 1799, the State of Mysore was restored to the old Hindu dynasty under Krishna Raj Wadiyar, a child of three years of age, the grandson of the ruler deposed by Haider Ali forty years before.

During the minority of the Maharaja, the administration was conducted by an able Brahman minister named Purnaiya, who was invested with full powers of administration. He continued in office till 1812, when he resigned the government into the hands of the Maharaja, leaving in the treasury a sum exceeding two crores of rupees. By a continued course of misgovernment the Maharaja drove the greater part of his subjects into rebellion, which was a danger to the peace of the neighbouring British districts and in 1831 it became necessary for the British Government to interfere. The Maharaja had dissipated all the treasure acquired by the Diwan Purnaiya, and had involved himself deeply in debt. Nothwithstanding promises to put restraint on his reckless expenditure, he continued to alienate revenues and sell privileges and State Offices, to raise funds for his extravagance. The pay of his troops fell into arrears. Extortions and cruelties were practised; and there was no hope of

redress. The raiyats combined in resistance, and at last rebellion broke out, calling for the active exertions of a large British force in addition to the whole military power of the Maharaja. So gross was the mismanagement and maladministration that it was deemed necessary for the British Government under the provisions of the Treaty of 1799, to assume the direct management of the State, subject to the claim of the Maharaja, reserved by the treaty, to a provision of one lakh of Star Pagodas a year and one-fifth of the net revenue realised from the territory, until arrangements for the good government of the country should be so firmly established as to secure it from future disturbance.

The Maharaja tried several times for the restoration of his State. When he failed in his attempts he requested that he be allowed to adopt a succeessor. This was also refused.

"In June 1865, notwithstanding the earlier decision of the Government, the Maharaja adopted Chamarajendra Wadiyar Bahadur, a child 2½ years of age, and a member of the Bettada Kote branch of the ruling family, as successor to all his rights and privileges. The Government of India declined to recognise the adoption, or to accord the Maharaja's adopted son the honours and privileges due to the heir to the State of Mysore.

In the following year the Maharaja again urged the question of the recognition of his adopted son, and in April 1867 his requests met with a favourable response. Without entering into any minute examination of the terms of the treaty of 1799. the British Government recognised in the policy which dictated that settlement a desire to provide for the maintenance of an Indian dynasty in Mysore upon terms which should at once afford a guarantee for the good government of the people and for the security of British rights and interests. Having regard to the antiquity of the Maharaja's family, its long connection with Mysore, and the personal loyalty, and attachment to the British Government which the Maharaja had manifested, the British Government desired to maintain that family

on the gadi in the person of the Maharaja's adopted son, upon terms corresponding with those made in 1799, so far as the altered circumstances of the time would allow. But before replacing the people of Mysore, in whose welfare the British Government felt peculiar interest, owing to their having so long been under British administration, under the rule of a Native ruler, it was held that it would be necessary both to give the young Chief an education calculated to prepare him for the duties of administration, and also to enter into an agreement with him as to the principles upon which he should rule the country. If at the demise of the Maharaja the young prince should not have attained his majority, the Mysore territory should, it was decided, continue to be governed in his name upon the same principles and under the same regulations as might be then in force.

Maharaja Krishna Raj Wadiyar, who had been appointed to be a Knight Grand Commander of the Most Exalted Order of the Star of India, survived only a year after the completion of this arrangement, and died on the 27th March 1868 at the age of seventy-four. A Proclamation (No. XLVI) was issued acknowledging the succession of Chamarajendra Wadiyar, and stating that during his minority the Mysore territory would be administered in his name by the British Government; and that if on his attaining the age of eighteen years he should be found qualified for the discharge of the duties of his position, the Government of the country would be entrusted to him, subject to such conditions as might be determined at that time. The Maharaja was accordingly publicly installed by the Commissioner of Mysore on the 23rd September 1868."

"On the 5th March, 1881, the Maharaja Chamarajendra Wadiyar Bahadur attained the age of 18 years; and on the 25th of the same month the Rendition of Mysore to native rule was effected by the installation of the young Chief as Maharaja of Mysore under a Proclamation (No. XLVII) of the Viceroy and Governor-General of India in Council. The Maharaja at the same time signed a Sanad or Instrument of Transfer (See page 213) describing in twenty-

four articles the conditions upon which the administration of the Mysore State was transferred to him by the British Goernment. By the fifth article the subsidy of twenty-five lakhs of rupees a year hitherto paid to the British Government by Mysore was enhanced to thirty-five lakhs. On the 5th of April 1881, the Maharaja signed a Deed of Assignment (No. XLIX) making over (with effect from the date of his accession, viz., the 25th March 1881) free of charge, to the exclusive management of the British Instrument of Transfer, all lands forming the Civil and Military station of Bangalore and certain adjacent villages, as described in the schedule attached to the Lands so assigned. The boundaries of these lands were slightly altered in 1883, 1888, 1896 and 1903. The fort of Bangalore was in 1888 restored to the Darbar in exchange for the Bangalore Residency house and grounds, which were then incorporated in the Civil and Military Station. The area of the Bangalore Assigned Tract is 13 square miles, with a population according to the Census of 1901, of 89,599. The revenues of this tract, derived chiefly from excise, are devoted to the expense incurred in its administration. The water-supply is obtained from the Chamarajendra Reservoir under an agreement concluded with the Darbar in January 1897. From the date of the rendition the Chief Commissioner of Mysore became Resident in Mysore and Chief Commissioner of Coorg.... He is invested with the powers of a local Government and of a High Court in respect of the Bangalore Assigned Tract."

(Pages 186 to 188, Aitchison's Collection, Vol. IX). Note:—The Instrument of Transfer is given in full in Appendix C.

APPENDIX E.

LORD READING'S LETTER TO THE NIZAM

Letter from the Viceroy and Governor-General of India to His Exalted Highness the Nizam of Hyderabad, dated Delhi, the 27th March 1926.

Your Exalted Highness,

Your Exalted Highness's letter of 20th September, 1926, which has already been acknowledged, raises questions of importance, and I have therefore taken time to consider my reply.

I do not propose to follow Your Exalted Highness into a discussion of the historical details of the case. As I informed you in my previous letter, your representations have been carefully examined, and there is nothing in what you now say which appears to affect the conclusions arrived at by me and my Government and by the Secretary of State. Your Exalted Highness's reply is not in all respects a correct presentation of the position as stated in my letter of 11th March last, but I am glad to observe that in your latest communication you disclaim any intention of casting imputations on my distinguished predecessor, the late Marquis Curzon.

I shall devote the remainder of this letter to the claim made by Your Exalted Highness in the second and third paragraphs of your letter and to your request for the appointment of a commission.

2. In the paragraphs which I have mentioned you state and develop the position that in respect of the internal affairs of Hyderabad, you, as Ruler of the Hyderabad State, stand on the same footing as the British Government in India, in respect of the internal affairs of British India. Lest I should be thought to overstate your claims, I quote Your Exalted Highness's own words; "Save and except matters relating to foreign powers and politics, the Nizams of Hyderabad have been independent in the internal affairs of their state just as much as the British Government in British India. With the reservation mentioned by

me, the two parties have on all occasions acted with complete freedom and independence in all inter-Governmental questions that naturally arise from time to time between neighbours. Now, the Berar question is not and cannot be covered by that reservation. No foreign power or policy is concerned or involved in its examination, and thus subject comes to be a controversy between the two Governments that stand on the same plane without any limiations of subordination of one to the other."

3. These words would seem to indicate a misconception of Your Exalted Highness's relations to the Paramount Power, which it is incumbent on me as His Imperial Majesty's representative to remove, since my silence on such a subject now might hereafter be interpreted as acquiescence in the propositions which you have enunciated.

4. The Sovereignty of the British Crown is supreme in India, and therefore no Ruler of an Indian State can justifiably claim to negotiate with the British Government on an equal footing. Its supremacy is not based only upon treaties and engagements, but exists independently of them and, quite apart from its prerogative in matters relating to foreign powers and politics, it is the right and duty of the British Government, while scrupulously respecting all treaties and engagements with the Indian States to preserve peace and good order throughout India. The consequence that follow are so well-known and so clearly apply no less to Your Exalted Highness than to other Rulers, that it seems hardly necessary, I would remind Your Exalted Highness that the Ruler of Hyderabad along with other Rulers received in 1862 a Sanad declaratory of the British Government's desire for the preparations of his House and Government, subject to continued loyalty to the Crown; that no succession in the Masnad of Hyderabad is valid unless it is recognised by His Majesty the King-Emperor; and that the British Government is the only arbiter in cases of disputed succession.

5. The right of the British Government to intervene in the internal affairs of Indian States is another

instance of the consequences necessarily involved in the supremacy of the British Crown. The British Government have indeed shown again and again that they have no desire to exercise this right without grave reason. But the internal, no less than the external, security which the Ruling Princes enjoy is due ultimately to the protecting power of the British Government, and where Imperial interests are concerned, or the general welfare of the people of a State is seriously and grievously affected by the action of its Government, it is with the Paramount Power that the ultimate responsibility of taking remedial action, if necessary, must lie. The varying degrees of internal sovereignty which the Rulers enjoy are all subject to the due exercise by the Paramount Power of this responsibility. Other illustrations could be added no less inconsistent than the foregoing with the suggestion that, except in matters relating to foreign powers and policies the Government of Your Exalted Highness and the British Government stand on a plane of equality. But I do not think I need pursue the subject further. I will merely add that the title "Faithful Ally" which Your Exalted Highness enjoys has not the effect of putting Your Government in a category separate from that of other State under the paramountcy of the British Crown.

6. In pursuance of your present conception of the relations between Hyderabad and the Paramount Power, you further urged that I have misdescribed the conclusion at which His Majesty's Government have arrived as a "decision" and that the doctrine of of **res judicate** has been misapplied to matters in controversy between Hyderabad and the Government of India.

7. I regret that I cannot accept Your Exalted Highness's view that the orders of the Secretary of State on your representation do not amount to a decision. It is the right and privilege of the Paramount Power to decide all disputes that may arise between State, or between one of the State and itself, and even though a Court of Arbitration may be appointed in certain cases, its function is merely to offer independ-

ent advice to the Government of India, with whom the decision rests. I need not remind you that this position has been accepted by the General body of the Indian Rulers as a result of their deliberations on paragraph 308 of the Montague-Chelmsford Report. As regards the use of the term res judicata, I am, of course, aware that the Government of India is not, like a Civil Court, precluded from taking cognizance of a matter which has already formed the subject of decision, but the legal principle of res judicata is based on sound practical considerations, and it is obviously undesirable that a matter which has once been decided should form the subject of repeated controversies between the same parties.

8. I now pass on to consider your request for the appointment of a Commission to enquire into the Berar case and submit a report. As Your Exalted Highness is aware the Government of India not long ago made definite provision for the appointment of a Court of Arbitration in cases where a State is dissatisfied with a ruling given by the Government of India. If however, you will refer to the document embodying the new arrangement, you will find that there is no provision for the appointment of a Court of Arbitration in any case which has been decided by His Majesty's Government, and I cannot conceive that a case like the present one, where a long controversy has been terminated by an agreement executed after full consideration and couched in terms which are free from ambiguity, would be a suitable one for submission to arbitration.

9. In accordance with Your Exalted Highness's request, your present letter has been submitted to His Majesty's Secretary of State, and this letter of mine in reply carries with it his authority as well as that of the Government of India.

Yours sincerely,
(Sd.) READING.

APPENDIX F.

LIST OF RULING PRINCES AND CHIEFS WHO HAVE BEEN ADMITTED AS MEMBERS OF THE CHAMBER OF PRINCES.

Salutes of 21 guns.

Baroda. The Maharaja (Gaekwar) of
Gwalior. The Maharaja (Scindia) of
Hyderabad. The Nizam of
Jammu and Kashmir. The Maharaja of
Mysore. The Maharaja of

alutes of 19 guns.

Bhopal. The Nawab of
Indore. The Maharaja (Holkar) of
Kolhapur. The Maharaja of
Travancore. The Maharaja of
Udaipur (Mewar). The Maharaja of

Salues of 17 guns.

Bahawalpur. The Nawab of
Bharatpur. The Maharaja of
Bikaner. The Maharaja of
Bundi. The Maharao Raja of
Cochin. The Maharaja of
Cutch. The Maharao of
Jaipur. The Maharaja of
Jodhpur (Marwar). The Maharaja of
Karauli. The Maharaja of
Kotah. The Maharao of
Patiala. The Maharaja of
Rewa. The Maharaja of
Tonk. The Nawab of

Salutes of 15 guns.

Alwar. The Maharaja of
Banswara. The Maharawal of
Datia. The Maharaja of
Dewas (Senior Branch). The Maharaja of
Dewas (Junior Branch). The Maharaja of
Dhar. The Maharaja of
Dholpur. The Maharaja Rana of

Dungarpur. The Maharawal of
Idar. The Maharaja of
Jaisalmer. The Maharawal of
Khairpur. The Mir of
Kishangarh. The Maharaja of
Orchha. The Maharaja of
Pratabgarh. The Maharawal of
Rampur. The Nawab of
Sikkim. The Maharaja of
Sirohi. The Maharao of

Salutes of 13 guns.

Benares. The Maharaja of
Bhavanagar. The Maharaja of
Cooch Bihar. The Maharaja of
Dhrangadhra. The Maharaja of
Jaora. The Nawab of
Jhalawar. The Maharaja Rana of
Jind. The Maharaja of
Junagadh (or Junagarh). The Nawab of
Kapurthala. The Maharaja of
Nabha. The Maharaja of
Nawanagar. The Maharaja of
Palanpur. The Nawab of
Porbandar. The Maharaja of
Rajapipla. The Maharaja of
Ratlam. The Maharaja of
Tipperah. The Maharaja of

Salutes of 11 guns.

Ajaigarh. The Maharaja of
Alirajpur. The Raja of
Baoni. The Nawab of
Barwani. The Rana of
Bijawar. The Maharaja of
Bilaspur. (Kahlur). The Raja of
Cambay. The Nawab of
Chamba. The Raja of
Charkari. The Maharaja of
Chhatarpur. The Maharaja of
Faridkot. The Raja of
Gondal. The Maharaja of
Janjira. The Nawab of
Jhabua. The Raja of

Malerkotla. The Nawab of
Mandi. The Raja of
Manipur. The Maharaja of
Morvi. The Maharaja of
Narasingarh. The Raja of
Panna. The Maharaja of
Pudukkottai. The Raja of
Radhanpur. The Nawab of
Rajgarh. The Raja of
Sailana. The Raja of
Samthar. The Raja of
Sirmur (Nahan). The Maharaja of
Sitamau. The Raja of
Suket. The Raja of
Tehri (Garhwal). The Raja of

alutes of 9 guns.

Balasinor. The Nawab (Babi) of
Banganapalle. The Nawab of
Bansda. The Raja of
Bariya. The Raja of
Chhota Udepur (Mohan). The Raja of
Danta. The Maharana of
Dharmapur. The Raja of
Dhrol. The Thakur Saheb of
Jawhar. The Raja of
Khilchipur. The Rao Bahadur of
Limbdi (Limbri). The Thakur Saheb of
Loharu. The Nawab of
Lunawada (or Lunawara). The Raja of
Maihar. The Raja of
Mudhol. The Raja of
Palitana. The Thakur Saheb of
Rajkot. The Thakur Saheb of
Sachin. The Nawab of
Sangli. The Chief of
Savantavadi. The Sar Desai of
Sant. The Raja of
Vankaner (or Wankaner). The Raja Saheb of
Wadhwan. The Thakur Saheb of

APPENDIX G

List of "sovereign states" having full and unrestricted powers of civil and criminal jurisdiction in their states and the power to make their own laws and having population above three lacs each.

A

Sl. No.	Name.	Area	Population	Income
	Under Government of India.			
1.	Hyderabad ..	82,698	14,436,148	8,42,13,000
2.	Mysore ..	29,444	6,557,302	3,54,41,000
3.	Baroda ..	8,099	2,443,007	2,42,39,000
4.	Kashmir and Jammu	80,900	3,646,243	2,51,71,000
	Central India Agency			
5.	Gwalior	25,041	3,523,070	2,49,50,000
6.	Indore	9,509	1,325,089	1,17,00,000
7.	Bhopal	6,859	729,955	80,00,000
8.	Rewa	13,000	1,581,445	52,80,000
9.	Orchha	2,080	314,661	13,74,000
	Rajputana Agency			
10.	Jodhpur	34,963	2,125,982	1,53,49,000
11.	Udaipur	12,691	1,566,910	73,32,000
12.	Jaipur	15,579	2,631,715	1,28,42,000
13.	Bharatpur	7,982	486,954	34,03,000
14.	Bikaner	23,311	936,218	1,25,87,000
15.	Kotah	5,684	685,804	44,69,000
16.	Alwar	3,141	749,751	36,80,000
	Baluchistan			
17.	Kalat	71,593	342,101	14,17,000
	Madras			
18.	Travancore	7,091	5,095,973	2,40,25,000
19.	Cochin	1,362	1,205,016	79,72,244
20.	Pudukottai	1,100	400,694	20,53,000
	Bombay.			
21.	Kolhapur	2,855	957,137	55,51,000
22.	Cutch	7,616	514,307	27,95,750

Area	Population	Income
2,860	500,274	1,91,90,446
3,284	548,152	84,25,191
3,791	409,192	95,18,748
889	465,225	44,64,000
933	391,272	18,65,006
5,412	1,625,520	1,50,18,000
15,000	984,612	35,63,000
630	316,757	36,00,000
928	287,574	27,52,000
1,259	324,676	25,65,000
1,307	590,886	25,05,984
20,000	400,000	4,00,000